* Together with Case No. 641, Nat'l Rel. Bd. v. Phelps Dodge Corp.

CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

No. 641

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

PHELPS DODGE CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED {AUGUST 30, 1940.
{DECEMBER 11, 1940.

CERTIORARI GRANTED JANUARY 13, 1941.

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1-a	RULES AND REGULATIONS of the National Labor Relations Board, Series 1, as amended, dated April 27, 1936	47	*
1-b	CHARGE sworn to May 25, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	4
1-c	Page 2 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	6
1-d	Page 1 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	8
1-d (2)	AFFIDAVIT by Rose E. Lombardo, sworn to January 5, 1938, of service of subpoena duces tecum on Mr. H. C. Henrie by registered mail	47	*
1-e	COMPLAINT AND NOTICE OF HEARING issued by the Board, dated January 10, 1938	47	10
	Appendix "A" attached to complaint—list of individuals whom, it is alleged in the complaint, Phelps Dodge Corporation, the respondent Corporation (petitioner herein), has refused to reinstate	47	27
1-f	AFFIDAVIT by Rose E. Lombardo, sworn to January 19, 1938, of service of Board's Exhibit No. 1-g by registered mail on the Copper Queen Branch of the respondent Corporation and on International Union of Mine, Mill and Smelter Workers, Local No. 30	47	*
1-g	ORDER by Towne Nylander, Regional Director of the Board, 21st Region, dated January 19, 1938, extending the respondent Corporation's time to answer	47	*

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
1-h	AFFIDAVIT by Lucile R. Chianici, sworn to January 11, 1938, of service of complaint, amended charge, notice of hearing and Rules and Regulations by registered mail on International Union of Mine, Mill and Smelter Workers, Local No. 30, on the Copper Queen Branch and the New York office of the respondent Corporation, on the Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, and on Denison Kitchel	47	*
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1-i	UNITED STATES POST OFFICE RETURN RECEIPTS re Board's Exhibit No. 1-f	47	*
1-j	ANSWER of the respondent Corporation, verified January 20, 1938	47	28
1-k	MOTION by the respondent Corporation to dismiss the complaint	47	42
1	Copy of ORDER dated January 25, 1938, designating Thomas H. Kennedy as Trial Examiner, and certification by Nathan Witt, Secretary of the Board, dated January 25, 1938, of said copy	51	*
2	Copy of ANALYSIS OF STRIKES in February, 1937, prepared by Division of Industrial Relations of the United States Department of Labor	48	*
3	Copy of various parts of REGISTRATION STATEMENT filed by the respondent Corporation with the Securities and Exchange Commission on May 11, 1937, and various parts of amendment thereto filed on May 25, 1937	51	*
5	STIPULATION between attorney for the Board and attorneys for the respondent Corporation as to facts	53	614

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Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
6	Copy of ANNUAL REPORT of the respondent Corporation for 1935	82	*
7	Copy of ANNUAL REPORT of the respondent Corporation for 1936	82	*
8	SERVICE RECORD CARD of Tom Abedin	90	621**
10	SERVICE RECORD CARD of William Day	140	621**
11	LIST of names and dates with respect to persons employed or re-employed by the respondent Corporation since June 10, 1935 (offered for identification only, and returned to counsel for the Board)	147	*
12	Copy of BLANK FORM entitled "Phelps Dodge Corporation, Copper Queen Branch, Statement of Time"	152	*
13	SERVICE RECORD CARD of Levie Crandal	161	622**
14	SERVICE RECORD CARD of Edgar L. Hargus	166	622**
15	SERVICE RECORD CARD of John Henry Key	177	623**
16	SERVICE RECORD CARD of George Edward Frasee	200	623**
17	SERVICE RECORD CARD of John Foley	208	624**
18	SERVICE RECORD CARD of Edward J. Bowden, Jr.	214	624**
19	SERVICE RECORD CARD of Paul Amaro	219	625**
20	SERVICE RECORD CARD of Wilford David Mortenson	229	625**
21	SERVICE RECORD CARD of Anson Perry Windsor	237	626**
22	SERVICE RECORD CARD of E. A. Curtis	244	626**
23	SERVICE RECORD CARD of William Dougherty	250	627**
24	LETTER dated February 10, 1934, from M. A. Bateman, Employment Agent of the respondent Corporation, to Mr. Tom Abedin	254	628

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
25	Service Record Card of Grover Dee Windsor ...	266	629**
26	Service Record Card of Joe Dunkerson	273	629**
27	Service Record Card of Vernon Curtis	281	630**
28	Service Record Card of Grover Cornett	287	630**
29	Service Record Card of Martin Vaclav	291	631**
30	Service Record Card of Montague L. Reed	299	631**
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37	Service Record Card of Frank Harold Erkkila ..	344	635**
38	Service Record Card of Luke Sertick	350	635**
39	Service Record Card of Merrell Ernest Johnson .	359	636**
40	Service Record Card of George Gerhardt	364	636**
41	Service Record Card of William D. Graham	368	637**
42	Service Record Card of William Edward Sharp, Jr.	377	637**
43	Service Record Card of Lester F. Bethel	390	638**
44	Service Record Card of Mike Mihelich	396	638**
45	Service Record Card of Pete D. Caretto	400	639**
46	Service Record Card of Henry Clyde Waters ..	407	639**
47	Service Record Card of Philities C. Lytle	413	640**
48	Service Record Card of Jesse Edge	421	640**
49	Service Record Card of H. J. Montgomery	426	641**
51	Service Record Card of J. M. Morris	436	641**
52	Service Record Card of Leonard Guess	440	642**

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

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54	SERVICE RECORD CARD of Harvey Dolph Edge ...	466	643**
55	SERVICE RECORD CARD of Ben Harrison Stringer .	473	643**
56	SERVICE RECORD CARD of George C. Rohrer	479	644**
57	Copy of LETTER dated June 10, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates, President of the respondent Corporation	595	645
58	Copy of TELEGRAM dated June 10, 1935, from P. G. Beckett to L. S. Cates, President of the respondent Corporation	597	647
59	Copy of LETTER dated August 6, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates	598	648
60	Copy of LETTER dated August 13, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated August 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein.....	599	649
61	Copy of LETTER dated August 27, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated August 24, 1935, from H. C. Henrie, Assistant General Superintendent of the respondent Corporation, to Mr. P. G. Beckett enclosed therein	600	656
	Copy of postscript to enclosed letter.....	600	659
62	Copy of LETTER dated July 14, 1937, from the General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated July 17, 1937, from the General Manager to Mr. L. S. Cates	600	660

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

Exhibit No.		*Admitted at Page*	*Printed at Page*
63	Copy of LETTER dated June 25, 1935, from the Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation	602	662
64	Copy of LETTER dated June 11, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated June 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein	602	665
65	Copies of two TELEGRAMS both dated August 25, 1935, one from P. G. Beckett to L. S. Cates, President of the respondent Corporation, and one from J. H. Davis to P. G. Beckett	603	669
66	Copy of LETTER dated June 5, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation	603	670
67	Copy of LETTER dated June 15, 1937, from the General Manager of the respondent Corporation to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated June 11, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation enclosed therein	604	672

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

PHELPS DODGE CORPORATION, a corporation,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD DATED JANUARY 16, 1940.

ELLINWOOD & ROSS,
Phoenix, Arizona.

DEBEVOISE, STEVENSON, PLIMPTON & PAGE,
20 Exchange Place,
New York City,

Attorneys for Petitioner.

DENISON KITCHEL,
WM. E. STEVENSON,
Of Counsel.

January 24th, 1940.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

PHELPS DODGE CORPORATION,
a corporation,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No.....

PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD
Dated January 16, 1940

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

Phelps Dodge Corporation, a corporation, pursuant to Section 10(f) of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. Code, Sections 151-166), respectfully petitions this Court to review and to set aside an order issued by the National Labor Relations Board against petitioner on the 16th day of January, 1940, in a proceeding appearing upon the records of respondent as "IN THE MATTER OF PHELPS DODGE CORPORATION, A CORPORATION, AND INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30, Case No. C-500."

In support of this petition petitioner makes the following statements to the Court:

(1) Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of New York and as such is transacting business and has its principal office in the City and County of New York, State of New

York, within this judicial circuit. Respondent's order is, therefore, reviewable by this Court under the provisions of Section 10(f) of the National Labor Relations Act.

(2) On January 10, 1938, a complaint was issued against petitioner by respondent, acting through its Regional Director for the Twenty-first Region (Los Angeles, California), alleging that petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act in connection with certain mining operations conducted by petitioner at Bisbee, Arizona. Petitioner filed its answer to this complaint on January 20, 1938, denying that it had engaged in or was engaging in the alleged unfair labor practices. A hearing before one of respondent's trial examiners was held in Bisbee, Arizona, from January 27 through February 3, 1938. The Trial Examiner's Intermediate Report was issued on March 16, 1938, and thereafter petitioner filed with respondent its statement of exceptions to the report and a brief in support of that statement. The matter was argued orally by petitioner's attorney before respondent in Washington, D. C., on May 5, 1938, and was reargued on July 20, 1939.

(3) Respondent's order, review of which is sought by this petition, was issued by respondent on January 16, 1940, and a copy thereof was served upon petitioner. The said order, which is preceded by respondent's findings of fact and conclusions of law, purportedly made from the record in the case, reads as follows:

"ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank

Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from the amount otherwise due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, munici-

pal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1(a) and (b); that it will take the affirmative action in 2(a), (b), (c), (d), and (e) of this Order; and that the respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

(4) The foregoing order of respondent is a final order by which petitioner is aggrieved and greatly prejudiced. Petitioner requests that the same be reviewed and set aside by the Court for the following reasons:

(a) The findings of fact upon which the foregoing order is predicated are not supported by substantial evidence in the record.

(b) The conclusions of law upon which the foregoing order is predicated are erroneous and contrary to law.

(c) The order in question is beyond the scope of the authority conferred upon respondent by Section 10 of the National Labor Relations Act and is in derogation of the rights guaranteed to petitioner by the Fifth Amendment to the Constitution of the United States.

(5) Respondent has been fully apprised by petitioner on several occasions by motions to dismiss, briefs, and oral arguments of the grounds upon which petitioner contends that the order in question is invalid and these grounds will be fully restated and presented to the Court in the brief to be filed by petitioner in support of this petition. The only new issue insofar as petitioner and respondent are concerned is raised by that portion of the order in question wherein petitioner is directed to pay over to the appropriate fiscal agencies of the federal, state, county, and municipal governments moneys earned on work-relief projects by the individuals as to whom the payment of back pay is required. Petitioner contends that the provisions of Section 10 of the National Labor Relations Act do not authorize respondent to issue such an order.

WHEREFORE, petitioner prays that this Court require the respondent to certify and file in this Court a transcript of the entire record in the proceeding, including the pleading and testimony upon which the order complained of was entered and the findings and order of respondent, that thereupon this Court review the order of respondent in this case and that after consideration of the record and of the arguments and contentions of the parties hereto a decree be issued setting aside said order in whole or in part as the Court may see fit in the premises.

Respectfully submitted,

ELLINWOOD & ROSS
DENISON KITCHEL
Phoenix, Arizona

DEBEVOISE, STEVENSON, PLIMPTON & PAGE
WM. E. STEVENSON
20 Exchange Place
New York City

Attorneys for Petitioner,
Phelps Dodge Corporation.

Dated January 24th, 1940.

No.—

In the United States Circuit Court of Appeals for the Second Circuit

PHELPS DODGE CORPORATION, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD ISSUED JANUARY 16, 1940, AND REQUEST FOR ENFORCEMENT OF SAID ORDER

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In the United States Circuit Court of Appeals for the Second Circuit

No.—

PHELPS DODGE CORPORATION, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD ISSUED JANUARY 16, 1940, AND REQUEST FOR ENFORCEMENT OF SAID ORDER

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. Sec. 151 *et seq.*), files its answer to the petition to review and set aside an order issued by the Board against Phelps Dodge Corporation, petitioner herein, on January 16, 1940, and the Board's request for enforcement of its said order:

1. The Board admits each and every allegation contained in paragraph (1) of the petition.

2. With respect to the allegations contained in paragraphs (2) and (3) of the petition, the Board, answering, prays reference to the certified transcript of the entire

record in the proceedings before the Board, filed herewith, for a full, exact, and complete statement of all the proceedings had in this case and of the pleadings, testimony, and evidence, findings of fact, conclusions of law, and order of the Board.

3. With respect to the allegations contained in paragraphs (4) and (5) of the petition, the Board, answering, denies each and every allegation of error contained therein. Further answering, the Board avers that the proceedings had before it, findings of fact, conclusions of law, and order were and are in all respects valid and proper under the National Labor Relations Act and the Constitution of the United States.

WHEREFORE, the Board respectfully prays this Honorable Court that said petition to review and set aside said order of the Board be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board on January 16, 1940, in the proceedings instituted by it against the petitioner, Phelps Dodge Corporation, said proceedings being designated on the records of the Board as Case No. C-500, the title thereof being *"In the Matter of Phelps Dodge Corporation, a corporation, and International Union of Mine, Mill, and Smelter Workers, Local No. 30."* In support of this request for the enforcement of its said order, the Board respectfully alleges as follows:

(a) Petitioner is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and has transacted and now transacts business in the State of New York, within this judicial circuit. This Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified transcript of the entire record thereof, filed herewith, to which reference is hereby made, and including, without limitation, complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report and exceptions

filed thereto, and written and oral argument before the Board, the Board on January 16, 1940, made its decision, duly stated its findings of fact and conclusions of law, and issued the following order directed to petitioner, its officers, agents, successors, and assigns:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill, and Smelter Workers, Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom

Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclay, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclay, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Moran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from the amount otherwise due him, monies received by him dur-

ing said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b); that it will take the affirmative action in 2 (a), (b), (c), (d), and (e) of this Order; and that the

respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, as amended, be, and it hereby is, dismissed, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess.

(c) Thereafter, on January 16, 1940, the Board's decision and order herein was duly served upon petitioner by sending copies thereof postpaid, bearing Government frank, by registered mail, to its attorneys, Ellinwood & Ross, in Phoenix, Arizona, and Denison Kitchel, in Bronxville, New York, and said decision and order is in full force and effect.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court herewith a transcript of the entire proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the transcript to be served upon petitioner, that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the transcript and upon the order made thereon, set forth in paragraph (b) hereof, a decree denying in whole the petition to set aside the order of the Board and enforcing in full said order of the Board and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By ROBERT B. WATTS,
Associate General Counsel.

Dated at Washington, D. C., this 18th day of March 1940.

DISTRICT OF COLUMBIA, *ss:*

Robert B. Watts, being first duly sworn, states that he is an Associate General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(s) ROBERTS B. WATTS.

Subscribed and sworn to before me this 18th day of March 1940.

[SEAL] (s) JOHN E. LAWYER,
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

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IN THE

United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

PHELPS DODGE CORPORATION,
a corporation,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD,
Respondent.
No.

Certificate of the National Labor Relations Board.

The National Labor Relations Board by its Secretary, duly authorized by Section 1 of Article CI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Phelps Dodge Corporation, a corporation and International Union of Mine, Mill and Smelter Workers, Local No. 30," the same being Case No. C-500 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30, sworn to May 25, 1937.

Certificate of the National Labor Relations Board.

2. Amended charge filed by the aforesaid union and sworn to December 18, 1937.

3. Complaint and notice of hearing issued by the National Labor Relations Board, dated January 10, 1938.

4. Order dated January 19, 1938, extending time to file answer.

5. Respondent's answer verified January 20, 1938.

6. Respondent's motions to dismiss.

7. Certified copy of order dated January 25, 1938, designating Thomas H. Kennedy Trial Examiner.

Documents listed hereinabove under items 1-7, inclusive, are contained in the exhibits and included under the following item:

8. Stenographic transcript of testimony before Thomas H. Kennedy, Trial Examiner for the National Labor Relations Board, on January 27, 29, 31, and February 1, 2, and 3, 1938, together with all exhibits introduced in evidence.

9. Supplemental stipulation dated February 16, 1938.

10. Respondent's motions to dismiss.

11. Copy of the Intermediate Report of Trial Examiner Kennedy dated March 16, 1938.

12. Copy of respondent's exceptions filed April 2, 1938.

13. Copy of respondent's request for petition to file briefs and oral argument dated April 1, 1938.

14. Copy of notice of hearing for purposes of oral argument issued by the National Labor Relations Board on April 5, 1938.

15. Copy of list of appearances at oral argument held on May 5, 1938.

Certificate of the National Labor Relations Board.

16. Stipulation dated January 11, 1939, together with consent of union dated January 31, 1939, to inclusion of stipulation in record.

17. Copy of letter dated June 16, 1939, advising parties of opportunity of requesting further oral argument.

18. Copy of letter from respondent dated June 23, 1939, requesting further argument.

19. Copy of notice of hearing for purposes of oral argument issued by the National Labor Relations Board on June 29, 1939.

20. Copy of respondent's telegraphic request dated June 29, 1939, requesting postponement of argument.

21. Copy of notice of postponement of oral argument dated June 30, 1939, together with copy of telegraphic notice of same.

22. Copy of list of appearances at oral argument before the National Labor Relations Board on July 20, 1939.

23. Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board on January 16, 1940, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 18th day of March 1940.

NATHAN WITT

NATHAN WITT, Secretary
NATIONAL LABOR RELATIONS BOARD

(SEAL)

Board's Exhibit No. 1-b.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
XXI REGION

IN THE MATTER OF PHELPS-DODGE CORPORATION *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL 30.	XXI-C-266 6 inv.

Charge

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Arizona, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that

Said company officials have by word and action discouraged employees to join a labor organization of their own choosing.

Said company officials have interfered with the formation of a labor organization; accepted office in a company union and allowed supervisory personnel to solicit support for such a company union while working on company time.

Said company officials have discriminated in regard to hire of employees by definitely refusing employment, solely for union membership, to the following persons: H. J. Montgomery; John Bowden; P. C. Lytle; William Dougherty; Merrill Johnson; and John James McKelvey.

Board's Exhibit No. 1-b.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30
JOHN P. FOLEY
JOHN P. FOLEY
President
Box 3336, Lowell, Arizona

Subscribed and sworn to before me this 25th day of May 1937 at Bisbee, Ariz.

ANDERS LARSEN
ANDERS LARSEN
Field Examiner

Board's Exhibit No. 1-c.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

XXIst REGION

IN THE MATTER OF PHELPS DODGE CORP. *and* INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, LOCAL No. 30	Case No. XXI C 266 Date filed 1937

Amended Charge

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Ariz., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) & (3) of said Act, in that (continued from page 1)

solely because they joined and assisted the union and engaged in concerted activities for their mutual aid and protection; and

In that the company at all times since July 5, 1935, has dominated and interfered with the formation and administration of a labor organization known as The Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, and has contributed financial and other support to it by permitting officials and foremen of the company to hold office in the Association, by soliciting membership in the Association on company property and

Board's Exhibit No. 1-c.

time, by controlling and dominating meetings of the Association and of its Representatives, and by other acts and in other manners.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, LOCAL No. 30
by: JOHN P. FOLEY

Subscribed and sworn to before me
this 18th day of December, 1937
DAVID PERSINGER
Atty. N. L. R. B.

Board's Exhibit No. 1-d.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

XXIst REGION

IN THE MATTER OF PHELPS DODGE CORP. *and* INTERNATIONAL UNION OF MINE, MILL and SMELTER WORKERS, LOCAL No. 30.	CASE NO. XXI-C-266

Date filed , 1937

Amended Charge

Pursant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Ariz., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that the company on or about July 5, 1935, and at all times thereafter, refused to reinstate, following a strike,

Tom Abedin	Edgar L. Hargus
Paul Amaro	Merrell Johnson
Bert Bethel	Richard Johnson
Lester F. Bethel	Alek Kalastro
Clyde Bigelow	John H. Key
W. H. Bigelow	P. C. "Dave" Lytle
Edward J. Bowden Jr.	Mike Mihelich

Board's Exhibit No. 1-d.

Pete D. Caretto
Grover Cornett
Levi Crandall
E. A. Curtis
T. N. Curtis
Vernon Curtis
William Daugherty
W. M. Day
Joe Dunkerson
Jesse Edge
H. D. Edge
Frank Erkkila
John Foley
George Gerhardt
William Graham
Leonard Guess
George Frazee
H. J. Montgomery
J. M. Morris
W. D. Mortenson McKelvey
Frank Peterson
Monte Reed
George Rohrer
E. M. Scales
Luke Sertich
William E. Sharpe
Ben H. Stringer
Martin Vaclav
Henry Waters
A. P. Windsor
Grover Windsor
William Windsor
Milton Wynn

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL UNION OF MINE, MILL, & SMELTER WORKERS, LOCAL No. 30
by: JOHN P. FOLEY
Box 3336, Lowell, Ariz.

Subscribed and sworn to before me
this 18th day of December, 1937.
DAVID PRESSINGER
Atty., N. L. R. B.

Board's Exhibit No. 1-c.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Complaint.

It having been charged by the International Union of Mine, Mill, and Smelter Workers, Local No. 30, that Phelps Dodge Corporation, 40 Wall Street, New York, New York, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board, by the Regional Director for the Twenty-first Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations —Series 1, as amended, hereby alleges the following:

1. Respondent is now and at all times herein mentioned has been a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, County of Kings, State of New York. Respondent is

now and at all times herein mentioned has been engaged at its mines in or near the City of Bisbee, County of Cochise, State of Arizona, hereinafter referred to as the Copper Queen Mine, in the mining and production of gold, silver, copper, and other ores, and at its plant in or near the City of Douglas, County of Cochise, State of Arizona, hereinafter referred to as the Douglas plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

2. Respondent, in the course and conduct of its business, as described in paragraph one hereof, causes and has continuously caused large quantities of various custom ores to be purchased and transported in foreign commerce from the Republic of Mexico to its said Douglas plant in the United States and in interstate commerce from and through states of the United States other than the State of Arizona to its Douglas plant in the State of Arizona.

3. Respondent, in the course and conduct of its business, as described in paragraphs one and two, hereof, causes and has continuously caused large quantities of the gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Douglas plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California, to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of the gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs one and two, hereof, to be sold and transported in interstate and foreign commerce from its Douglas plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

Board's Exhibit No. 1-e.

4. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of Jerome, County of Yavapai, State of Arizona, hereinafter referred to as the United Verde Mine, in the mining and production of gold, silver, copper, and other ores, and at its plant in or near the town of Clarkdale, County of Yavapai, State of Arizona, hereinafter referred to as the Clarkdale plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

5. Respondent, in the course and conduct of its business, as described in paragraph four, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate commerce from states of the United States other than the State of Arizona, to its Clarkdale plant in the State of Arizona.

6. Respondent, in the course and conduct of its business as described in paragraphs four and five hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Clarkdale plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California, to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ore, as described in paragraphs four and five hereof, to be sold and transported in interstate and foreign commerce from its Clarkdale plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

7. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town

of Ajo, County of Pima, State of Arizona, hereinafter referred to as the New Cornelia Mine, in the mining and production of gold, silver, copper, and other ores, and at its plants in or near the town of Ajo, County of Pima, State of Arizona, hereinafter referred to as the Ajo plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

8. Respondent, in the course and conduct of its business, as described in paragraph seven, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate commerce from states of the United States other than the State of Arizona, to its Ajo plant in the State of Arizona.

9. Respondent, in the course and conduct of its business, as described in paragraphs seven and eight, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Ajo plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs seven and eight, hereof, to be sold and transported in interstate and foreign commerce from its Ajo plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

10. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of

Morenci, County of Graham, State of Arizona, hereinafter referred to as the Morenci Mine, in the mining and production of gold, silver, copper, and other ores and at its plants in or near the town of Morenci, aforesaid, hereinafter referred to as the Morenci plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

11. Respondent, in the course and conduct of its business, as described in paragraphsten, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate and foreign commerce from the Republic of Mexico and from states of the United States other than the State of Arizona to its Morenci plant in the State of Arizona.

12. Respondent, in the course and conduct of its business, as described in paragraphs ten and eleven, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Morenci plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs ten and eleven, hereof, to be sold and transported in interstate and foreign commerce from its Morenci plant in the State of Arizona to, into and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

13. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of Tyrone, in the State of New Mexico, hereinafter referred to

as the Burro Mountain Mine, in the mining and production of gold, silver, copper, and other ores, and at its plants in or near the aforesaid town of Tyrone, hereinafter referred to as the Tyrone plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

14. Respondent, in the course and conduct of its business, as described in paragraph thirteen, hereof, causes and has continuously caused large quantities of various custom ores to be transported in foreign commerce from the Republic of Mexico and in interstate commerce from states of the United States other than the State of New Mexico, to its Tyrone plant in the State of New Mexico.

15. Respondent, in the course and conduct of its business, as described in paragraphs thirteen and fourteen, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Tyrone plant in the State of New Mexico, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores as set forth in paragraphs thirteen and fourteen, hereof, to be sold and transported in interstate and foreign commerce from its Tyrone plant in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico, territories of the United States, and foreign countries.

16. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Dawson Fuel Mines Company, a wholly owned subsidiary, at its mines in

or near the City of Dawson in the State of New Mexico, hereinafter referred to as the Dawson Mine, in the mining and production of gold, silver, copper, and other ores and at its plants in or near the City of Dawson in the State of New Mexico, hereinafter referred to as the Dawson plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

17. Respondent, in the course and conduct of its business, as described in paragraph sixteen, hereof, causes and has continuously caused, large quantities of various custom ores to be transported in interstate and foreign commerce from the Republic of Mexico and from states of the United States other than the State of New Mexico to its Dawson plant in the State of New Mexico.

18. Respondent, in the course and conduct of its business, as described in paragraphs sixteen and seventeen, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Dawson plant in the State of New Mexico, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and, through the medium of the Dawson Fuel Mines Sales Company, a wholly owned subsidiary, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs sixteen and seventeen, hereof, to be sold and transported in interstate and foreign commerce from its Dawson plant in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico, territories of the United States, and foreign countries.

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19. Respondent is now and at all times herein mentioned has been engaged at its Stag Canon Mine in or near the City of Dawson, County of Colfax, State of New Mexico, in the mining and production of coal.

20. Respondent, in the course and conduct of its business, as described in paragraph nineteen, hereof, causes and has continuously caused large quantities of the coal produced at its Stag Canon Mine to be transported in interstate commerce from said Stag Canon Mine in the State of New Mexico to its various plants, described in paragraphs one to twelve, supra, in the State of Arizona, and causes and has continuously caused large quantities of the coal produced at its said Stag Canon Mine to be sold and transported in interstate commerce from its Stag Canon Mine in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico.

21. Respondent, in the course and conduct of its business, as described in paragraphs one to twenty, both inclusive, hereof, causes and has continuously caused large quantities of natural and artificial gas to be purchased and transported in interstate commerce from the States of Texas and Oklahoma to its aforesaid mines and plants, described in paragraphs one to twenty, both inclusive, hereof, in the States of Arizona and New Mexico and causes and has continuously caused large quantities of coal, oil, and other fuels to be purchased and transported in interstate commerce from states of the United States other than the States of Arizona and New Mexico to its aforesaid mines and plants, described in paragraphs one to twenty, both inclusive, hereof, in the States of Arizona and New Mexico, and causes and has continuously caused large quantities of raw materials used in the concentrating, smelting, and refining operations of its aforesaid plants, described in paragraphs one to eighteen, inclusive, hereof, to be purchased and transported in interstate commerce from states

of the United States other than the States of Arizona and New Mexico to its said plants in the States of Arizona and New Mexico.

22. Respondent is now and at all times hereinafter mentioned has been engaged, through the medium of the Nichols Copper Company, a subsidiary, at its plants in or near the City of El Paso in the State of Texas, hereinafter referred to as the El Paso plant, in the concentrating, smelting, and refining of gold, silver, copper, and other ores.

23. Respondent, in the course and conduct of its business, as described in paragraph 22, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate and foreign commerce from states of the United States other than the State of Texas and from the Republic of Mexico to its El Paso plant in the State of Texas.

24. Respondent, in the course and conduct of its business, as described in paragraphs 22 and 23 hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its El Paso plant in the State of Texas, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be sold and transported in interstate and foreign commerce from its El Paso plant in the State of Texas to, into, and through states of the United States other than the State of Texas, territories of the United States, and foreign countries.

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25. Respondent is now and at all times hereinafter mentioned has been engaged, through the medium of the Nichols Copper Company, a subsidiary, at its plants in or near the Town of Laurel Hill on Long Island in the State of New York, hereinafter referred to as the Long Island plant, in the manufacture, sale, and distribution of electrolytic copper, sulphate of copper, and other copper and copper alloy products.

26. Respondent, in the course and conduct of its business, as described in paragraph 25, hereof, causes and has continuously caused large quantities of the copper and other metallic and non-metallic substances produced by it at its aforesaid plants, described in paragraphs one to eighteen, and 22 to 24, inclusive, hereof, to be transported in interstate commerce from its said plants in the States of Arizona, New Mexico, and Texas through states of the United States other than the State of New York to its Long Island plant in the State of New York, hereinabove described in paragraphs one to eighteen and 22 to 24, inclusive, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products as described in paragraph 25, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to its Long Island plant in the State of New York, and causes and has continuously caused large quantities of the electrolytic copper, sulphate of copper, and other copper and copper alloy products manufactured by it to be sold and transported in interstate and foreign commerce from its Long Island plant in the State of New York to, into, and through States of the United States other than the State of New York, territories of the United States, and foreign countries.

27. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Phelps Dodge

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Copper Products Corporation, a subsidiary, at its plants in the Cities of Elizabeth and Bayway in the State of New Jersey, in the City of Fort Wayne in the State of Indiana, and in the City of Los Angeles in the State of California in the manufacture, sale, and distribution of copper rods, bare and tinned copper wires, stranded cables, trolley and contact wire, copper bus bars, commutator strip, weather-proof wires, magnet wires, bronze and brass wires, condenser tubes, brass, bronze, and copper pipes, copper service pipes, copper bus tubes, heater, cooler, and air-conditioning tubes, enameled copper wires, cotton or silk covered wires, paper insulated wires, coil and radio power transformers, copper and copper alloys having high physical properties, and other copper and copper alloy products.

28. Respondent, in the course and conduct of its business, as described in paragraph 27, hereof, causes and has continuously caused large quantities of copper and other products of its plants, described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, to be transported in interstate commerce from its said plants in the States of Arizona, New Mexico, and Texas through states of the United States other than the States of New Jersey, Indiana, and California to its said plants in the States of New Jersey, Indiana, and California, as hereinabove described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products, as described in paragraph 27, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the States of New Jersey, Indiana, and California and to its aforesaid plants in the States of New Jersey, Indiana, and California, and causes and has continuously caused large quantities of the various copper and copper alloy products manufactured by it, as described in

paragraph 27, hereof, to be sold and transported in interstate and foreign commerce from its said plants in the States of New Jersey, Indiana, and California to, into, and through states of the United States other than the States of New Jersey, Indiana, and California, territories of the United States, and foreign countries.

29. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Habirshaw Cable and Wire Corporation, a subsidiary, at its plants in the Cities of Yonkers and Nepperhan in the State of New York, and the City of Bridgeport in the State of Connecticut in the manufacture, sale, and distribution of rubber insulated wires, paper insulated power cables, coils, transformers, special copper alloys, and other copper and copper alloy products.

30. Respondent, in the course and conduct of its business, as described in paragraph 29, hereof, causes and has continuously caused large quantities of the copper and other substances produced at its aforesaid plants, described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, to be transported in interstate commerce from the aforesaid plants in the States of Arizona, New Mexico, and Texas, through states of the United States other than the States of New York and Connecticut to its aforesaid plants in the States of New York and Connecticut, as hereinabove set forth in paragraphs one to eighteen and 22 to 24, inclusive, hereof, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products, as described in paragraph 29 hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the States of New York and Connecticut to its said plants in the States of New York and Connecticut, and causes and has continuously caused large quantities of its products, described in paragraph 29, hereof,

to be sold and transported in interstate and foreign commerce from its said plants in the States of New York and Connecticut to, into, and through states of the United States other than the States of New York and Connecticut, territories of the United States, and foreign countries.

31. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Phelps Dodge Mercantile Company, a subsidiary, at its stores in the Town of Ajo, the City of Bisbee, and the City of Douglas, all in the State of Arizona, and in the City of Dawson in the State of New Mexico, and in the Town of Nacozari, Province of Sonora, Republic of Mexico, in the wholesale and retail distribution of general merchandise.

32. Respondent, in the course and conduct of its business, as described in paragraph 31, hereof, causes and has continuously caused large quantities of the merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the States of Arizona and New Mexico, to its aforesaid stores in the States of Arizona and New Mexico and in foreign commerce from the United States to its aforesaid store in the Republic of Mexico and from the Republic of Mexico to its aforesaid stores in the States of Arizona and New Mexico.

33. Respondent is now and at all times herein mentioned has been engaged at other mines, plants, and stores and, through subsidiaries, at still other mines, plants, stores, and various public utility properties, within and without the United States, in the mining, smelting, and refining of gold, silver, copper, and other ores and custom ores and in the manufacture, production, sale, and distribution of copper and copper alloy products, gas, water, and electric power, and gas, water, and general merchandise.

34. Respondent, in the course and conduct of its business, as described in paragraph 33, hereof, causes and has

continuously caused large quantities of the aforesaid ores and gold, silver, copper, and other metallic and non-metallic products extracted from said ores to be transported in interstate commerce from and through states of the United States other than the states within which the aforesaid plants are located to its said plants, and causes and has continuously caused large quantities of the raw materials used in the manufacture and production of the products described in paragraph 33, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the states within which the said plants and other properties are located to said plants and other properties, and causes and has continuously caused large quantities of the products manufactured and produced by it, as described in paragraph 33, hereof, to be sold and transported in interstate and foreign commerce from the said plants and other properties to, into, and through states of the United States other than the states in which said plants and other properties are located, territories of the United States, and foreign countries, and causes and has continuously caused large quantities of the general merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the states within which the said stores are located to the said stores.

35. The International Union of Mine, Mill, and Smelter Workers, Local No. 30, hereinafter called the union, is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

36. Respondent, by its officers and agents, while engaged in the Copper Queen Mine, as described in paragraphs one to three, inclusive, hereof, following a strike called June 10, 1935, which strike was in full force and effect on July 5, 1935, did on or about July 5, 1935 refuse and at all times thereafter has refused and now does refuse to reinstate

those individuals whose names appear in Appendix "A" attached hereto and herewith incorporated into and made a part of this complaint, hereinafter referred to as those individuals named in Appendix "A", and each of them, employed, prior to the said strike, in the Copper Queen Mine.

37. Respondent refused and has refused and now does refuse to reinstate the said individuals named in Appendix "A", and each of them, as set forth in paragraph 36, hereof, for the reason that the said individuals named in Appendix "A", and each of them, joined and assisted the union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

38. By its refusal to reinstate said individuals named in Appendix "A", and each of them, as set forth in paragraphs 36 and 37, hereof, respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said individuals named in Appendix "A", and each of them, and did thus discourage and is thus discouraging membership in the union, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

39. By its refusal to reinstate the said individuals named in Appendix "A", and each of them, as set forth in paragraphs 36 and 37, hereof, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

Board's Exhibit No. 1-e.

40. The activities of respondent, as set forth in paragraphs 36 to 39, both inclusive, hereof, occurring in connection with the operations of respondent, described in paragraphs one to thirty-four, both inclusive, hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, territories of the United States, and foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

41. The aforesaid acts of respondent, as set forth in paragraphs 36 to 39, both inclusive, hereof, occurring in connection with the operations of respondent, described in paragraphs one to thirty-four, both inclusive, hereof, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board, on this 10th day of January, 1938, issues its complaint against Phelps Dodge Corporation, respondent herein.

NOTICE OF HEARING.

PLEASE TAKE NOTICE THAT on the 27th day of January, 1938, in the Superior Courtroom, Bisbee, Arizona, at 9:30 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 1, as amended, Article IV and Article II, Section 23, on the allegations set forth in the complaint hereinabove set forth, at which time and place you have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National

Board's Exhibit No. 1-e.

Labor Relations Board, an answer to the foregoing complaint, on or before the 19th day of January, 1938.

Enclosed herewith for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF, the National Labor Relations Board has caused this, its complaint and its notice of hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 10th day of January, 1938.

TOWNE NYLANDER

TOWNE NYLANDER
Regional Director, 21st Region
National Labor Relations Board
745 Pacific Electric Bldg.
Los Angeles, California

(SEAL)

Appendix "A".

Tom Abedin
Paul Amaro
Bert Bethel
Lester F. Bethel
Clyde Bigelow
W. H. Bigelow
Edward J. Bowden, Jr.
Pete D. Caretto
Grover Connett
Levi Crandall
E. A. Curtis
T. N. Curtis
Vernon Curtis
William Daugherty
W. M. Day
Joe Dunkerson
Jesse Edge
H. D. Edge
Frank Erkkila
John Foley
George Gerhardt
William Graham
Leonard Guess
Edgar L. Hargus
Merrell Johnson
Richard Johnson
Alek Kalastro
John H. Key
P. C. Lytle
Mike Mikelich
H. J. Montgomery
J. M. Morris
W. D. Mortenson McKelvey
Frank Peterson
Monte Reed
George Rohrer
E. M. Scales
Luke Sertich
William E. Sharpe
Ben H. Stringer
Martin Vaclav
Henry Waters
A. P. Windsor
Grover Windsor
William Windsor
Milton Wynn
George Frazee
Earl Worden

Board's Exhibit No. 1-j.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL NO. 30	CASE NO. XXI-C-266

Answer.

Comes now the respondent, Phelps Dodge Corporation, and in answer to the complaint in the above entitled matter admits, denies, and alleges as follows:

I.

In answer to Paragraph 1 of the complaint, respondent admits that it is now and at all times therein mentioned has been a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, County of New York, State of New York. Respondent further admits that it is now and at all times therein mentioned has been engaged in its mines in or near the City of Bisbee, County of Cochise, State of Arizona, in the mining and production of gold, silver, copper and other

ores. Respondent alleges that the aforesaid mining operations constitute the Mines Division of the Copper Queen Branch of respondent and that all of the ores produced at respondent's said Copper Queen Branch, Mines Division, are shipped in intrastate commerce a distance of approximately twenty-five miles to respondent's smelter located near the City of Douglas, County of Cohise, State of Arizona, save and except a small quantity of lead ore which has been shipped in interstate commerce from respondent's Copper Queen Branch, Mines Division, to the refinery of the Nichols Copper Company located in the City of El Paso, State of Texas. Respondent further alleges that it is engaged in the smelting of the aforesaid and other ores at said smelter and that such smelting operations constitute the Smelter Division of the Copper Queen Branch of the respondent. Respondent further alleges that the ores received from the Copper Queen Branch, Mines Division, at the smelter of the Copper Queen Branch, Smelter Division, as aforesaid, are smelted and converted into copper bullion. Respondent denies that it is engaged in the concentrating and refining of the aforesaid or any other ores at the smelter of its Copper Queen Branch, Smelter Division.

II.

In answer to Paragraph 2 of the complaint, respondent admits that in the course and conduct of the smelter operations conducted at its Copper Queen Branch, Smelter Division, as described in Paragraph I hereof, it causes and has continuously caused quantities of various custom ores to be purchased and transported in foreign commerce from the Republic of Mexico to its smelter located near the City of Douglas in the State of Arizona. Respondent denies, however, that large quantities of such custom ores were so purchased and transported, and in this respect re-

spondent alleges that such custom ores constitute a relatively small percentage of the total ores smelted at its Copper Queen Branch, Smelter Division. Respondent admits that it causes and has continuously caused quantities of various custom ores to be purchased and transported in interstate commerce from and through states of the United States other than the State of Arizona to its smelter located near the City of Douglas in the State of Arizona. Respondent denies, however, that large quantities of such custom ores were so purchased and transported, and in this respect respondent alleges that such custom ores constitute a relatively small percentage of the total ores smelted at its Copper Queen Branch, Smelter Division.

III.

Respondent denies all and singular the allegations set forth and contained in Paragraph 3 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its Copper Queen Branch, Smelter Division, is shipped from the City of Douglas, State of Arizona, to the refinery of the Nichols Copper Company, located in the City of El Paso, State of Texas.

IV.

In answer to the allegations of Paragraph 4 of the complaint, respondent admits that it is now and at all times thereinafter mentioned has been engaged at its mine in or near the Town of Jerome, County of Yavapai, State of Arizona, in the mining and production of gold, silver, copper and other ores. Respondent alleges that the aforesaid mining operations constitute the Mine Division of the United Verde Branch of respondent and that the ores produced at its United Verde Branch, Mine Division, are

shipped in intrastate commerce a distance of approximately ten miles to its smelter located in the Town of Clarkdale, County of Yavapai, State of Arizona, where the same are concentrated, smelted and converted into copper bullion. Respondent further alleges that it is engaged in the smelting of the aforesaid and other ores at said smelter and that such smelting operations constitute the Smelter Division of the United Verde Branch of respondent. Respondent denies that it is engaged in the refining of the aforesaid or any other ores at its United Verde Branch, Smelter Division.

V.

Respondent denies all and singular the allegations set forth and contained in Paragraph 5 of the complaint.

VI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 6 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its United Verde Branch, Smelter Division, is shipped in interstate commerce to the refinery of the Nichols Copper Company, located in or near the Town of Laurel Hill on Long Island, in the State of New York.

VII.

In answer to the allegations set forth and contained in Paragraph 7 of the complaint, respondent admits that it is now and at all times thereinafter mentioned has been engaged at its mines at or near the Town of Ajo, County of Pima, State of Arizona, in the mining and production of

gold, silver, copper and other ores. Respondent further admits that at its plant in or near the Town of Ajo, County of Pima, State of Arizona, it is engaged in the concentrating of said ores. Respondent alleges that the aforesaid mining and concentrating operations constitute the New Cornelia Branch of respondent, and respondent denies that its New Cornelia Branch is engaged in the smelting and refining of the aforesaid or any other ores.

VIII.

Respondent denies all and singular the allegations set forth and contained in Paragraph 8 of the complaint.

IX.

Respondent denies all and singular the allegations set forth and contained in Paragraph 9 of the complaint, and in this respect respondent alleges that all of the concentrates produced at its New Cornelia Branch, as described in Paragraph VII hereof, are shipped either in intrastate commerce to the smelter of respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona, or in interstate commerce through the State of New Merico to the smelter of its Morenci Branch, Smelter Division, in the Town of Clifton, County of Greenlee, State of Arizona.

X.

In answer to the allegations set forth and contained in Paragraph 10 of the complaint, respondent admits that it is now and at all times thereinafter mentioned has been engaged at its mines in or near the Town of Morenci, County of Greenlee, State of Arizona, in the mining of gold, silver, copper and other ores. Respondent alleges that the afore-

said mining operations constitute the Mines Division of the Morenci Branch of the respondent. Respondent further alleges that the copper precipitates produced at its Morenci Branch, Mines Division, are shipped either in interstate commerce through the State of New Mexico to the smelter of the respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona, or in intrastate commerce to the smelter located in the Town of Clifton, County of Greenlee, State of Arizona. Respondent admits that it is now and has been since the first day of October, 1937, engaged in its smelter in the Town of Clifton, County of Greenlee, State of Arizona, in the smelting of the aforesaid ore and ores received from its New Cornelia Branch, as alleged in Paragraph IX hereof. Respondent further alleges that such smelting operations constitute the Smelter Division of the Morenci Branch of respondent. Respondent denies that its Morenci Branch, Smelter Division, is engaged in the concentrating or refining of the aforesaid or any other ores.

XI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 11 of the complaint.

XII.

Respondent denies all and singular the allegations set forth and contained in Paragraph 12 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its Morenci Branch, Smelter Division, as described in Paragraph X hereof, is shipped in interstate commerce to the refineries of the Nichols Copper Company, located in or near the City of El Paso, State of Texas.

Board's Exhibit No. 1-j.

XIII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 13 to 18, inclusive, of the complaint.

XIV.

Respondent admits the allegations set forth and contained in Paragraph 19 of the complaint and further alleges that the coal mining operations therein referred to constitute the Stag Cañon Branch of respondent.

XV.

In answer to the allegations set forth and contained in Paragraph 20 of the complaint, respondent denies that in the course and conduct of its business, as described in Paragraph 19 of the complaint, respondent causes and has continuously caused any quantity of the coal produced at its Stag Canon Branch to be transported in interstate commerce from the said Stag Canon Branch in the State of New Mexico to respondent's various plants, described in Paragraphs 1 to 12 of the complaint, in the State of Arizona. Respondent admits that it causes and has continuously caused large quantities of the coal produced at its Stag Canon Branch to be sold and transported in interstate commerce from its Stag Canon Branch in the State of New Mexico to, into and through states of the United States other than the State of New Mexico.

XVI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 21 of the complaint and in this respect respondent alleges that it purchases natural gas from the El Paso Natural Gas Company, which said

natural gas is transported by the said El Paso Natural Gas Company from its gas fields in the State of New Mexico and delivered for use at the Copper Queen Branch, Mines Division, the Copper Queen Branch, Smelter Division, and the New Cornelia Branch of respondent, located at Bisbee, Douglas and Ajo, Arizona, respectively. Respondent alleges that it purchases large quantities of coal for use at its United Verde Branch, Smelter Division, at Clarkdale, Arizona, which said coal is shipped to Clarkdale, Arizona, from Gallup, New Mexico. Respondent alleges that it causes and has continuously caused quantities of oil and other fuels to be purchased and transported in interstate commerce from states of the United States other than the States of Arizona and New Mexico to its various branches located in the States of Arizona and New Mexico. Respondent alleges that the custom ores smelted at its Copper Queen Branch, Smelter Division, at Douglas, Arizona, constitute the only raw material, other than ores produced by respondent, used in any substantial quantity in the production of copper bullion, and respondent admits as set forth in Paragraph II hereof that quantities of said custom ores are purchased and transported in foreign and interstate commerce.

XVII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 22 to 26, inclusive, of the complaint, and in this respect respondent alleges that all of the copper bullion produced at its Copper Queen Branch, Smelter Division, and at its Morenci Branch, Smelter Division, located at Douglas and Clifton, Arizona, respectively, is shipped in interstate commerce to the refinery of the Nichols Copper Company located in or near the City of El Paso, State of Texas, where the said copper bullion is refined by the Nichols Copper Company for respondent on a toll basis. Respondent further alleges that

all of the copper bullion produced at its United Verde Branch, Smelter Division, located at Clarkdale, Arizona, is shipped in interstate commerce to the refinery of the Nichols Copper Company located in or near the Town of Laurel Hill on Long Island, State of New York, where the said copper bullion is refined by the Nichols Copper Company for respondent on a toll basis. Respondent further alleges that the Nichols Copper Company is a subsidiary of respondent and is engaged in its refineries in El Paso, Texas, and Laurel Hill, New York, in the refining of copper bullion and in the manufacture, sale and distribution of electrolytic copper, sulphate of copper and other copper and copper alloy products. Respondent further alleges that it causes and has continuously caused electrolytic copper bars, manufactured and produced for it as aforesaid by Nichols Copper Company, to be sold and transported in interstate commerce from the States of Texas and New York to the various plants of the Phelps Dodge Copper Products Corporation, located in the States of New York, New Jersey, Indiana and California, as is more particularly alleged in Paragraph XVIII hereof.

XVIII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 27 to 30 of the complaint, and in this respect respondent alleges that the Phelps Dodge Copper Products Corporation is a subsidiary of respondent and is engaged in the fabricating and manufacturing of copper products at its various divisions, named and with plants located, as follows: American Copper Products Division, Bayway, New Jersey; British American Tube Division, Bayway, New Jersey; Habirshaw Cable and Wire Division, Yonkers and Nepperhan, New York; Inca Manufacturing Division, Fort Wayne, Indiana; Inca Manufac-

turing Division, Los Angeles, California. Respondent further alleges that among the copper products manufactured by Phelps Dodge Copper Products Corporation are copper rods, copper wires, stranded cables, trolley and contact wires, copper bus bars, commutator strips, flats and special shapes, weatherproof wires and cables, magnet wires, bronze and brass wires, condenser tubes, brass and copper pipe, copper service pipe, copper bus tubes, heater and cooler tubes, oil burner tubes, air-conditioning tubes, brass and bronze rods, paper insulated power cables, varnished cambric insulated wires and cables, asbestos insulated wires, cables and cords, rubber insulated building wires and cables, rubber power cables, flexible cords and cables, enameled copper wires, textile insulated wires, paper insulated wire, coils and transformers. Respondent further alleges that in the course and conduct of its business, it sells and has continuously sold large quantities of electrolytic copper bars produced for it at the El Paso and Laurel Hill refineries of Nichols Copper Company, as alleged in Paragraph XVII hereof, to the Phelps Dodge Copper Products Corporation, and that the said electrolytic copper bars are transported in interstate commerce from the States of Texas and New York to the above mentioned divisions and plants of Phelps Dodge Copper Products Corporation. Respondent further alleges that the Phelps Dodge Copper Products Corporation, at its Habirshaw Cable and Wire Division, with plants located in the City of Yonkers and in the City of Nepperhan, State of New York, is engaged in operations which include the insulating of copper wires and cables with rubber, paper, varnished cambric and asbestos. Respondent further alleges that large quantities of the products manufactured by Phelps Dodge Copper Products Corporation are sold, distributed and shipped by Phelps Dodge Copper Products Corporation in interstate and foreign commerce from its plants in

the States of New Jersey, New York, Indiana and California, to, into and through states of the United States other than the States of New Jersey, New York, Indiana and California, territories of the United States and foreign countries.

XIX.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 32 and 33 of the complaint, and in this respect respondent alleges that the Phelps Dodge Mercantile Company is a subsidiary of respondent and is engaged in the wholesale and retail distribution of general merchandise at its stores located in the Cities of Bisbee and Douglas, Arizona, and in the City of Dawson, State of New Mexico. Respondent further alleges that the Phelps Dodge Mercantile Company, in the course and conduct of its business, causes and has continuously caused quantities of the merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the States of Arizona and New Mexico to its aforesaid stores in the States of Arizona and New Mexico.

XX.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 33 and 34 of the complaint, and in this respect respondent alleges that the Moctezuma Copper Company is a subsidiary of the respondent and that the Moctezuma Copper Company of Mexico, S. A., a Mexican corporation, is a subsidiary of the Moctezuma Copper Company. Respondent further alleges that the Moctezuma Copper Company of Mexico, S. A., is engaged in its mines located in the District of Moctezuma,

Board's Exhibit No. 1-j.

State of Sonora, Republic of Mexico, in the mining and production of gold, silver, copper and other ores. Respondent further alleges that the ores so mined and produced by the Moctezuma Copper Company of Mexico, S. A., are shipped in foreign commerce from the State of Sonora, Republic of Mexico, to the smelter of respondent's Copper Queen Branch, Smelter Division, located at Douglas, Arizona, where the same are smelted and converted into copper bullion.

Respondent further alleges that the New Cornelia Cooperative Mercantile Company is a subsidiary of respondent and is engaged in the wholesale and retail distribution of general merchandise at its store located in the Town of Ajo, County of Pima, State of Arizona. Respondent further alleges that quantities of the merchandise sold by the New Cornelia Cooperative Mercantile Company are purchased and transported in interstate commerce from and through states of the United States other than the State of Arizona, to its aforesaid store in the State of Arizona.

Respondent further alleges that the Ajo Improvement Company, The Morenci Water Company, the Warren Company and the Upper Verde Public Utilities Company are subsidiaries of respondent and are engaged as public utilities in the sale and distribution of electricity and water to consumers in the communities of Ajo, Morenci, the Bisbee District and the Jerome-Clarkdale District, respectively. Respondent further alleges that the activities engaged in and the services rendered by the aforesaid public utilities are confined exclusively to the State of Arizona and are wholly intrastate in character.

XXI.

Respondent admits the allegations set forth and contained in Paragraph 35 of the complaint.

Board's Exhibit No. 1-j.

XXII.

Respondent specifically denies all and singular the allegations set forth and contained in Paragraph 36 of the complaint, and in this respect respondent alleges that on or about June 10, 1935, as shown by respondent's payroll records, a group of individuals employed by respondent on said date at its Copper Queen Branch, Mines Division, which said group constituted less than ten per cent of the total number of persons employed on said date by respondent at its Copper Queen Branch, Mines Division, and included some but not all of the individuals listed in Appendix "A" attached to the complaint, voluntarily and without notice to the respondent left their employment with respondent. Respondent further alleges that on and after June 10, 1935, said individuals, who voluntarily terminated their employment as aforesaid, thereby severed themselves from respondent's payroll and were no longer employees of or employed by respondent. Respondent further alleges that on and after said tenth day of June, 1935, and prior to the fifth day of July, 1935, respondent employed other persons to do and perform the work theretofore done and performed by the individuals in said group. Respondent further alleges that there was not on July 5, 1935, nor has there been at any time subsequent thereto, a strike in force or effect among the employees of respondent's Copper Queen Branch, Mines Division. Respondent further alleges that there was not on July 5, 1935, nor has there been at any time before or since said date, a labor dispute between respondent and any of the employees at its Copper Queen Branch, Mines Division. Respondent further alleges that since July 5, 1935, certain of the individuals listed in Appendix "A", attached to the complaint, who have applied for employment at respondent's Copper Queen Branch, Mines Division, to this date have not been employed by respondent.

Board's Exhibit No. 1-j.

XXIII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 37 to 41, inclusive, of the complaint.

WHEREFORE, respondent, Phelps Dodge Corporation, having fully answered the complaint herein, moves that the same be dismissed and that no further proceedings be had in connection therewith.

PHELPS DODGE CORPORATION
By H. M. LAVENDER
General Manager

STATE OF ARIZONA }
COUNTY OF COCHISE } ss.:

H. M. LAVENDER, being first duly sworn, upon his oath deposes and says that he is the General Manager of Phelps Dodge Corporation; that he has read the foregoing answer and that the allegations therein set forth and contained are true and correct to the best of his knowledge and belief; that he has signed the foregoing answer on behalf of respondent, Phelps Dodge Corporation, being thereunto duly authorized. PHELPS DODGE CORPORATION, by H. M. LAVENDER, General Manager.

Subscribed and sworn to before me this 20 day of January, 1938.

E. G. HICKS
Notary Public

My commission expires January 29, 1939

(SEAL)

Board's Exhibit No. 1-k.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Respondent's Motions to Dismiss.

Comes now respondent, Phelps Dodge Corporation, by its attorneys, Messrs. Ellinwood and Ross, William A. Evans and Denison Kitchel, and moves to dismiss the complaint in the above entitled case upon the following grounds:

I.

Respondent moves to dismiss the complaint herein upon the ground that as applied to the mining operations of respondent at its Copper Queen Branch, Mines Division, the National Labor Relations Act (Act of July 5, 1935; Public No. 198, 74th Congress; 49 Stat. 449) is invalid and unconstitutional under and by virtue of the provisions of the Tenth Amendment to the Constitution of the United States.

Board's Exhibit No. 1-k.

II.

Not waiving the foregoing motion, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that any order which might be entered by the National Labor Relations Board against respondent, based upon the allegations of said complaint and under and pursuant to the terms and provisions of the National Labor Relations Act, supra, would be invalid and unconstitutional under and by virtue of the provisions of the Fifth Amendment to the Constitution of the United States.

III.

Not waiving the foregoing motions, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that there was either prior to, on or subsequent to the fifth day of July, 1935, between respondent and any of the employees at its Copper Queen Branch, Mines Division, a labor dispute as defined in Section 2 (9) of the National Labor Relations Act, supra.

IV.

Not waiving the foregoing motions, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent, in the mining operations conducted at its Copper Queen Branch, Mines Division, was at any of the times therein mentioned or is now engaged in commerce as defined in Section 2 (6) of the National Labor Relations Act, supra.

Board's Exhibit No. 1-k.

V.

Not waiving the foregoing motions but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent has at any of the times therein mentioned or is now engaged in any unfair labor practice as defined in Section 8 of the National Labor Relations Act, supra.

VI.

Not waiving the foregoing motions but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent has at any of the times therein mentioned or is now engaged in any unfair labor practice affecting commerce as defined in Section 2 (7) of the National Labor Relations Act, supra.

ELLINWOOD & ROSS,
WILLIAM A. EVANS,
DENISON KITCHEL,
Attorneys for Respondent,
Phelps Dodge Corporation.

Proceedings.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Cochise County Court House, Room 2,
Bisbee, Arizona,
THURSDAY, JANUARY 27, 1938.

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondents.

PROCEEDINGS.

Trial Examiner Kennedy: Are you ready to proceed, gentlemen?

Mr. Persinger: The Board is ready.

Mr. Kitchel: Respondent is ready.

Trial Examiner Kennedy: The hearing will be in session. This is a hearing called by order of the National Labor Relations Board pursuant to the National Labor Relations Act. The proceedings are conducted much the same as court procedure. We request all spectators to observe the usual court decorum. Any speaking, any talking that you have to do, kindly step out of the room to do it. When the hearing is in session, we do not permit smoking.

There is one official copy of the report made by the Official Reporter. Anyone who desires a copy of the report may make a contract with the representative of the Official Reporter.

If counsel expect at any time to move to exclude witnesses during any of the testimony, I would like to have that motion made at the beginning of the hearing before any witnesses are sworn. If you do not make it at the beginning of the hearing, it will not be entertained thereafter. Further than that, the rule that I expect to impose here is, when a witness is on the stand and being cross examined and a recess is called, that witness will be instructed not to talk to any counsel or any person represented in the matter unless counsel for both the Board and the respondent are present.

I believe those are all the preliminary remarks I have to make. I am ready to proceed.

Mr. Persinger: If the Examiner please, I will offer as Board's Exhibit 1, the file containing the pleadings in this matter, containing copy of the Board's Rules and Regulations;

Copy of the charge filed by Mr. Foley for the International Union of Mine, Mill & Smelter Workers Local No. 30;

Amended charge filed December 18th;

Copy of the complaint and notice of hearing, affidavit of service of the complaint and notice of hearing on corporation and the complaining union;

Affidavit of service of subpoena duces tecum on Mr. Henrie, Assistant General Superintendent of the Mines Division, Copper Queen Branch of the corporation;

The original of an order granting an extension of time within which to answer;

Affidavit of service of the complaint and notice of hearing on the union, on the corporation, Copper Queen Branch, the corporation, New York office; the Employees' Association, and on Mr. Kitchel as attorney for the corporation;

The return receipts;

The answer filed by the corporation on the 20th day of January and respondent's motions to dismiss.

Now, I will offer as Board's Exhibit No. 2, an analysis of strikes in February, 1937, prepared by the United States Department of Labor, Bureau of Labor Statistics.

Trial Examiner Kennedy: Is there any objection?

Mr. Kitchel: Mr. Trial Examiner, we object to the introduction of Board's Exhibit No. 2 on the ground it has no bearing on the proceedings, and no foundation has been laid for its introduction.

Trial Examiner Kennedy: You make no objection to Board's Exhibit No. 1?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Board's Exhibit No. 1 will be received in evidence.

(Thereupon the documents above referred to were received in evidence and marked as Board's Exhibit No. 1.)

Trial Examiner Kennedy: Does the Reporter have the appearances?

The Reporter: Yes.

Trial Examiner Kennedy: Do you have Board's Exhibit No. 2, Mr. Persinger?

Mr. Persinger: Board's Exhibit No. 2 is fastened to the front of the file.

Trial Examiner Kennedy: Board's Exhibit 2 appears to be a publication of the United States Department of Labor and for the reason that it would be judicially noted by the Board in any event, the objection is overruled and it will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 2.)

Trial Examiner Kennedy: I notice here there is a motion to dismiss.

What is the pleasure of counsel on that motion? Does he wish that to be considered?

Mr. Kitchel: Mr. Trial Examiner, as those motions go to the sufficiency of the complaint as filed and do not have to do with the evidence which will be introduced during the course of the proceedings, we would like to have a ruling on those motions before the hearing proceeds.

Trial Examiner Kennedy: They are all included in one document, the written motions?

Mr. Kitchel: Yes.

Trial Examiner Kennedy: Do you wish to argue the motion orally?

Mr. Kitchel: No, I do not wish to argue them, I think they are included in the written motion in full.

Trial Examiner Kennedy: Do you have any points or authorities to submit?

Mr. Kitchel: There are none.

Trial Examiner Kennedy: Do you wish to speak on the motion, Mr. Persinger?

Mr. Persinger: I believe not, Mr. Examiner.

Trial Examiner Kennedy: We will take a 10-minute recess, and I will examine the motions.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

The motions to dismiss are severally denied.

Mr. Kitchel: Mr. Trial Examiner, will our exceptions be noted to those rulings?

Trial Examiner Kennedy: You may stipulate between counsel that exceptions to adverse rulings will be automatically noted if you desire to do so.

Mr. Persinger: So stipulated.

Mr. Kitchel: It is agreeable with us.

Trial Examiner Kennedy: That will be the ruling in this case.

Mr. Kitchel: Mr. Trial Examiner, I would like at this time to make an amendment of the respondent, on page 8 of the answer, Paragraph 19, Line 2.

Amend the word "32" to read "31." That is, the figures "32" to read "31," and the figures "33" to read "32," so that the reference then is to paragraphs 31 and 32 rather than to paragraphs 32 and 33. That was a typographical error.

Trial Examiner Kennedy: Any objections?

Mr. Persinger: No objection.

Trial Examiner Kennedy: The amendment will be granted and I will direct the Reporter to make that entry on the original.

Mr. Persinger: Will counsel at this time stipulate that the charge and complaint may be amended to include the name of Earl Worden as a complaining witness.

Mr. Kitchel: We will stipulate to that, Mr. Trial Examiner.

Trial Examiner Kennedy: The complaint is amended to include the name of whom?

Mr. Persinger: Earl Worden, W-o-r-d-e-n.

Trial Examiner Kennedy: W-o-r-d-e-n. At what place?

Mr. Persinger: In the appendix, which contains the list of the complaining witnesses; and also in the body of the amended charge.

Trial Examiner Kennedy: So stipulated and so ordered. The Reporter will make the addition.

Mr. Persinger: I will offer as Board's Exhibit No. 3 a certified copy of the Registration Statement of Phelps Dodge Corporation with the Securities and Exchange Commission, for some date in the year 1937; and also an amended statement which sets out the various properties of the corporation, its principal subsidiaries and their properties, and a brief statement of the business of the corporation.

Trial Examiner Kennedy: Have you presented that to counsel?

Mr. Persinger: Counsel have seen this.

Mr. Kitchel: We have a copy here, Mr. Trial Examiner.

We would like to object to the introduction, not knowing, first, what the purpose of the offer is. We object upon the grounds the registration offered is incompetent, irrelevant and immaterial. If it is offered on the Interstate Commerce issue, we maintain it has no bearing on the question of whether or not a labor dispute at the mines division of the Copper Queen branch of the Phelps Dodge Corporation would tend to obstruct the flow of interstate commerce.

Trial Examiner Kennedy: What is the purpose of the offer, Mr. Persinger?

Mr. Persinger: The purpose of the offer is to show the financial and operating set-up of the corporation and its wholly-owned subsidiaries, the location of its various properties, the inter-relation of those properties, and, in general, the business of the corporation, since the complaint is directed to the corporation and not the Mines Division of the Copper Queen branch.

Trial Examiner Kennedy: There is only one respondent, and that is the corporation. Is that correct?

Mr. Persinger: Yes.

Trial Examiner Kennedy: And this exhibit relates to that corporation?

Mr. Persinger: It relates to the corporation. It shows the integrated nature of the operating set-up, including the subsidiaries.

Trial Examiner Kennedy: Do you recall the date upon which this was filed with the Securities and Exchange Commission?

Mr. Persinger: It was in the spring of 1937, I believe, originally in April, and amended in May; but I am not certain of the exact date, or the month. It is in there somewhere.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 3.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 3.)

Trial Examiner Kennedy: I suggest that the Reporter mark these exhibits as we go along. I will turn them over to you. (Passing documents to Reporter.)

Mr. Persinger, as to Board's Exhibit 1, I suggest it be subdivided by letters.

Mr. Persinger: That is satisfactory.

Trial Examiner Kennedy: Will you so mark it, Mr. Reporter?

The Reporter: Yes.

Mr. Persinger: Yes, beginning with the Rules and Regulations, and going forward.

I offer as Exhibit No. 4 a publication of the Bisbee Chamber of Commerce; the pages are not numbered, but on the second from the last page, headed "Hardy Pioneers . . . Mining and Ranching . . . Produce Wealth as well as Glamour," the single paragraph on the left at the top reading as follows:

"The Mule Range, with Bisbee and Tombstone marking the limits of its mineral area, has disgorged nearly a billion dollars in metals in a half century."

Trial Examiner Kennedy: Merely that statement, is that what you wish in?

Mr. Persinger: Merely that statement.

Trial Examiner Kennedy: Will counsel stipulate that that may go in?

Mr. Kitchel: No, we will not stipulate, Mr. Trial Examiner. We do not know who made the statement, and upon what facts it was based. It was not made by any representative of the respondent.

Trial Examiner Kennedy: The offer will be refused. Counsel may have the exhibit, the proposed exhibit, separately bound and presented to the Board. That is the procedure in case exhibits are refused. If you desire, you may instruct the Reporter that that is what you wish done.

Mr. Persinger: I would like to have the Reporter, in that case—will counsel stipulate that that is a publication of the Chamber of Commerce?

Mr. Kitchel: Yes, we will so stipulate.

Mr. Persinger: I would like to have the Reporter cut out that paragraph and include it in the exhibits.

Trial Examiner Kennedy: Do you understand the procedure for the rejected exhibits, Mr. Reporter?

The Reporter: Yes.

Mr. Persinger: I offer as Board's Exhibit 5, a stipulation entered into by and between counsel for the Board and counsel for the respondent, covering the various subsidiaries and the various properties of the corporation and its subsidiaries, together with figures of production for the years 1935 and 1936.

In offering this, counsel have already agreed that certain additions are to be made to it, they will later be offered as a supplementary to this, and as a part of it. I think that will be satisfactory, will it not, Mr. Kitchel?

Mr. Kitchel: That will be satisfactory.

Mr. Persinger: The statement of the amount of natural gas purchased by respondent from the El Paso Natural Gas Company, this natural gas being used in certain of its prop-

erties in Arizona. The amount of coal purchased by the respondent for use at its Clarkdale smelter and shipped from Gallup, New Mexico; the amount of fuel oil purchased by respondent and shipped to its various Arizona properties from points outside the State of Arizona; and on page 3 of the stipulation it is indicated that the total amount of copper refined for the year 1935 was in excess of 359 million pounds. That was refined at the two refineries at Laurel Hill, New York, and in El Paso, Texas. It is indicated on page 4 that the Phelps Dodge Copper Products Company fabricates a good deal of refined copper, fabricated in 1935 over 87 million pounds.

Counsel has agreed to present later the disposition of the remaining amount of copper which was refined but not fabricated by the corporation, and the same thing is true for the year 1936.

And on the final page of the stipulation, the plant of the Harbishaw Wire & Cable Division, or branch, I believe it is, of the respondent, is omitted and figures on that will be made available later by the respondent; and also the plant located at Los Angeles, California, has been omitted and figures will be later made available on that.

Mr. Kitchel: Mr. Trial Examiner, we have stipulated that those are the facts as set forth there, and we also have told Mr. Persinger that we will get, in so far as we can, the answers to the additional questions that he has asked of us.

We do, however, object to the introduction of the stipulation in evidence upon the ground that it has no bearing on the question of whether or not an unfair labor practice, alleged to have occurred at the Mines Division of the Copper Queen Branch of Phelps-Dodge Corporation, has any bearing on interstate commerce; that the actions and activities of the subsidiaries of the Phelps-Dodge Corporation are absolutely irrelevant to that question.

Trial Examiner Kennedy: The objection is overruled. The Stipulation will be received in evidence as Board's Exhibit No. 5.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 5.)

Mr. Persinger: Will counsel at this time stipulate that the business of the Respondent and its subsidiaries in 1937 was substantially unchanged from that during the years 1935 and 1936.

Mr. Kitchel: We will not stipulate to that, Counsel. Perhaps I might word it this way: We will stipulate that the facts as shown in the stipulation covering the years 1935 and 1936 are indicative of the facts which would be found for 1937 as to the business of the corporation.

Mr. Persinger: Does counsel know if there has been any important change in the set-up for the year 1937?

Mr. Kitchel: No, not that we know of.

Mr. Persinger: I will ask counsel at this time if progress has been made in securing certain information required in the subpoena duces tecum?

Mr. Kitchel: In answer to that question, we have here available and will turn over to counsel at this time, the material called for in paragraph 6 of the subpoena, the material called for in paragraphs 15 through 19.

I would like to state for the purposes of the record that Mr. Persinger and myself have discussed this matter. The subpoena was such that it might have taken several months to assemble all of this material, and that we are making a conscientious effort to have the rest of it just as soon as we can, which should be a matter of just a few more days.

Mr. Persinger: And I will make the further statement, that a good deal of the material called for in the subpoena has been included in the stipulation.

Trial Examiner Kennedy: Has been what?

Mr. Persinger: Included in the stipulation.

Trial Examiner Kennedy: I see.

Mr. Persinger: Mr. Pidgeon, will you take the stand, please.

G. C. Pidgeon—For National Labor Relations Board—Direct.

G. C. PIDGEON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Give me your full name, please.

The Witness: G. C. Pidgeon.

Trial Examiner Kennedy: How do you spell your last name?

The Witness: P-i-d-g-e-o-n.

Direct Examination.

Q. (By Mr. Persinger) Mr. Pidgeon, are you an employee of the Phelps-Dodge Corporation, Copper Queen Branch, Mines Division? A. I am.

Q. Are you familiar with the properties of the Mines Division, the physicial properties? A. I am.

Q. Will you tell us in your own words of what the surface properties of that division consists? What are the actual buildings and approximately where are they located with reference to each other and to the town of Bisbee, and where are the openings to the mine itself? A. Well, there are about 30 or 40 shafts in the district, of which there are at the present time four main operating shafts. There are probably, oh, less than 10 other shafts, which are at present operated by lessees.

Now, do you wish me to go into all of the shafts, or the four principal ones that are operated by the company?

Q. The four principal ones operated by the company. A. The Junction Shaft, the main shaft of the company, at the present time is located in the town of Lowell. At that shaft are located the principal shops of the company, the supply warehouse, one of the main power plants of the company, and just outside of the fence are the general foreman's office, the office of the master mechanic, the engineering and assay offices of the company.

G. C. Pidgeon—For National Labor Relations Board—Direct.

Q. Do you know the source of the power? A. We have two power plants in the district, and some of the power is distributed from Douglas. That is, I don't know just what the flow of power is between Bisbee and Douglas, but there are two main plants in this district.

Q. What fuel is used for generating the power at Lowell? A. Gas.

Q. Natural gas? A. Yes.

Q. What are the principal shops which you mentioned as being located at the Junction Shaft? A. There is a machine shop, boiler shop, tin shop, electrical shop, and blacksmith shop; also the carpenter's shops, pipe shops, and a drill-sharpening shop.

Q. What are the principal uses of the power produced at the power plant in connection with the mine? A. They furnish compressed air, different workings; they furnish electric power for the hoists; they furnish electricity, both surface and ground juices, and they furnish power for the pumps.

Q. What sort of pumps? A. What sort of pumps?

Q. I mean, are they water pumps? A. Yes, sir.

Q. Do you have pumps for ventilating? A. We have fans, as we call them, for ventilating.

Q. Is there any other surface equipment of which you can think which would be important? A. No, I think not. There is a framing shaft for the framing of mine timbers.

Q. At the opening of each of the other three shafts, do you have approximately the same surface equipment? A. No, sir. Those shops are central shops, and practically all the work of the different mines is taken to the Junction Shop.

At the Camel Shaft, which is next in importance, there is a change house, hoist house and a small framing shed in which a part of the timbers used in the mines are framed.

G. C. Pidgeon—For National Labor Relations Board—Direct.

Q. The hoist, I take it, is an elevator which runs down into the mine? A. The hoist engine—what we call the "hoist"—is an engine that operates the elevator, or, as it is termed in the mine, a "cage."

Q. In relation to the Junction Shaft, where are the other three shafts located? A. The Camel Shaft is approximately half a mile from the Junction Shaft in an easterly direction; the Cole Shaft is roughly a mile in a southwesterly direction. The Sacramento Shaft is a half a mile in a northwesterly direction.

Trial Examiner Kennedy: What was the name of that third?

The Witness: Cole.

Trial Examiner Kennedy: How do you spell it?

The Witness: C-o-l-e.

Trial Examiner Kennedy: G-o-l-e?

The Witness: C-o-l-e.

Q. (By Mr. Persinger) Now, will you describe as to a visitor the actual procedure of entering the shaft, the type of work that is carried on inside the mine, the method for removing the ore? A. Well, after you have changed your clothes and gone to the collar of the shaft which is the intersection of this opening with the surface, you come to the shaft which is a vertical opening extending down into the earth. They are all different sizes, and I might take the Junction Shaft as being typical.

The Junction Shaft, its outside dimensions are about 31 feet by 10 feet. The inside diameters are about 29 feet by 6 feet. The 29 feet in length is divided up into five compartments, the one compartment is for air pipes, water pipes, electrical cables, and material of that nature that is needed in the operation of the mine. That compartment is seven feet long. The others vary slightly and are between four and a half and five feet along the length of the shaft and six feet in depth across the width of the shaft.

We step onto a cage. At the Junction that cage has two decks, each deck for the shift going down holds 12 men. We get on that cage and go down.

Q. How many men operate that cage? A. There is a hoist engineer and there are two cagers. As a rule, there is but one man at the cage at a time. This man operates the cage.

You get on, he opens the gates, there is a bar across, probably 30 inches high and there is a safety gate, and there is no chance of falling off the cage, and you are lowered into the mine.

At different points in the mine, there are what we call levels. At these levels there are tunnels going off in various directions. Some of those tunnels are several miles long. As you get off the cage to enter, you don't at once go into this tunnel, you go into a station which is larger than the tunnel. It is probably, most of them are the full width of the shaft. That is, at some places they are slightly smaller. That station would be—I should say a minimum of 15 feet wide up to 30 feet wide, and in length a minimum of 20 to 25 feet up to 75 or 80 feet in length.

There are a number of small tracks for mine cars on these levels, and they are used as a storage for timber, cars, and other supplies.

As we step off and start in one of these tunnels, one of the first things we pass over is what we call a grizzly in the track. It may be either in the track or on each side of the track, which is an opening, in the bottom of this drift, covered with rails, a space from 12 to 15 inches in diameter. The purpose of that is to receive the rock dumped from ore in waste cars in the mine. We pass over that and into one of these tunnels, which we term "drifts" or "crosscut."

Q. Now, what happens to the ore that is dumped into that opening? A. The ore goes from these cars into what

is called a pocket, and that pocket at the Junction extends to anywhere from 40 to 75 or 100 feet below the level at which you are on. From there it is drawn into skips in the shaft and hoisted to the surface, where it is placed into railroad cars.

I have a section of a shaft there showing the location of pockets, if you would care to look at it.

Q. Well, we can't make it a part of the record very well. A. You can't make it a part of the record, but just as a matter of information it may enlighten you.

Mr. Persinger: Would you like to look at it, Mr. Examiner?

Trial Examiner Kennedy: Do you think the locale has any materiality to the issues here?

Mr. Persinger: I think it may clear up the meaning of the names of certain occupations, you see.

Trial Examiner Kennedy: Very well.

Q. (By Mr. Persinger) We might look at that after you have finished taking us through the mine. A. We pass through this indoor tunnel. We drive these tunnels, both for ore extraction and for the purpose of finding ore, for ventilation purposes, and for various other reasons. This tunnel is an opening, the smallest of which in the mine, I think, are about 5½ feet wide and 7½ feet high. They vary in width up to—some of them are 8 feet wide and 10 feet high. Some of those are of such nature that they must be timbered; some of them stand without any support, and others receive what we call a coat of gunnite, or several coats of gunnite, which is a mixture of cement and sand that is sprayed on the wall and gives a more of a seal coat to prevent oxidization than anything else.

As we pass along this drift and encounter ore, and that ore is developed—that ore is developed by crosscuts and drifts in the ore to determine the extent of it, and after it

is found, we drive a raise on that ore to determine its vertical extent. The major part of the ore that is being mined at the present time is mined by what we call the incline cut and fill method. It is a modification of what is universally known as the real method of stoping.

As we start stoping in there, if we would come into a stope that was just starting, we would see the back or roof of this tunnel had been shot up and widened for probably 10 feet above the floor of the drift, might even reach 15 or 18 feet, depending on the strength and character of the rock.

After that ground is drilled, blasted and cleaned out, there are timbers placed in there. And there is then what we call a row of leads along the main drift where we start stoping operations. The back is drilled as high as it is safe and convenient. We go up and take that ore out and there are grizzlies placed over that, timbers in the tunnel, which are planked over, and grizzlies and chutes put in there from which the ore is drawn into the motor cars.

When this first section has been mined as far as it can be mined, or as far as the plans call for the mining, a raise is driven up from the highest point in the stope to the level above. This raise, which is maybe vertical or inclined, in most of our hard ground, is a hole roughly 6 feet in diameter, and it is used for the purpose of ventilation, also for the purpose of introducing fill into that stope. After the ore has been extracted and the opening is as large as can be made either conveniently or safely, that hole is filled almost to the back, as we term it, with waste material. If there is ore underneath this, if the tunnel itself has been in ore and the tunnel is going down before that space is filled in, a floor is laid so that in later mining, when it comes up they will have this floor of plank to come up under and not the loose fill or muck that is in the workings.

After this first cut has been taken out and the fill has been made, that loose material is covered with planks, plank

floor, and then the operation starts back from the main row of leads again and another cut approximately 10 feet is taken up, care being taken when possible to have that cut made on the angle of repose of the ore, the idea being that all material that can will slide to this row of leads. This row of leads, which is over the drift, is composed of timbers, either 8 x 8 inches in size, or 8 x 10 inches, and varying in height up to, well, they are approximately 8 feet. The length of the timbers varies with the thickness of the timbers, and the framing requirements.

So you have in there what we call a square set, 6 feet square center to center of the timbers, and the set above 8 feet 6 inches high, and they are built one on top of the other. That is, as the ore is extracted above the leads and we take a new cut, this row of leads is always at the bottom of the cut which we are taking, and is covered with grizzlies, so that large boulders will not go down in the chute below.

Incidentally, a chute or pocket is the point from which the ore is drawn from the raise into the car. From then on the stope becomes a succession of cutting, which is drilling, blasting and strengthening the ore and filling. The extent of the cycle depends on the nature of the source from which the fill is maintained, and also the readiness with which it can be gotten into the stope.

As the ore is drawn out here, it is drawn into motor cars. The motor crew usually consists of two men, and is drawn from there to the shaft where it is dumped into the pockets.

From the pockets it is drawn into the skips, and from the skips it is hoisted through the shaft and dumped. At the Junction it dumps onto a short conveyor belt which takes it into the railroad cars.

At the Camel it goes into a storage bin.

That is one system of mining. Where the ground it is not strong enough, where it is heavy, hard to support and it is unsafe and unwise to open up a considerable amount of ground, there are various other methods.

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One method used in other parts of the mine is square-setting, in which no more ground—these square sets are either 5 x 5 in their horizontal dimension and 8 feet high, or 6 x 6 in horizontal dimension and 6 feet high.

In the square-set system of mining, it is very seldom that more ground is opened up at one time than will accommodate one set of timbers.

In the top-slice method, you start at the top of the ore body instead of at the bottom. The top of the ore body would be square-setted off and the timbers blasted down, and another cut taken underneath. Those slices are about 10 feet in vertical extent. Their horizontal dimensions depend on the size and shape of the ore body.

At the Junction, the stopes are of all sizes and very irregular. In the Camel mine, these cut and fill sections, which I have attempted to describe, are about 40 feet long, and they will run back anywhere from 40 feet to, in some cases, 60—I should say, 80 feet in width.

Their vertical extent in the Camel—we try to take them through 200 feet in a succession of cuts and fills. It is impossible to take these sections out of the whole country so that in a good many cases we have left pillars, and probably the average size of the pillar in the Camel mine is 30 feet. Those are pillars of solid ground that are left to support the levels above, and also support the fill or gob, and after the gob in the excavation has settled, solidified for some time, then it is safe to go in and mine out the pillars by some other method of mining.

We use sometimes a fill that is solidified to such an extent that we can cut and fill in it. In most cases we mine that by what we call the Mitchell Slice.

In the tunnels, the cycle of operations there doesn't vary a great deal. A miner goes in in the morning and inspects his face, washes down his face, examines it to see whether there has been any unexploded powder left in the holes, washes it thoroughly, and then he sets up his machine and

does what we call "drills his round;" drills holes with a machine and steel into the rock for the purpose of driving this tunnel ahead.

The number and depth of those holes will depend on the nature of the ground, the size and shape of the opening desired, and the experience of the miner. He has a helper to set up his drill. After he has drilled a sufficient number of holes he tears down that machine, loads the hole with powder and blasts it. The next shift coming on does what we call "mucks out the drift." Most of our mucking out is mechanical mucking. That consists of small shovels run by compressed air, that shovel this material into the cars.

In a few cases in the mine we do have hand shoveling, and there will be one or two men working in the place, depending on the size of it, the amount of material there is to get out, and the urgency required in the operation.

Raises are vertical or inclined openings in levels, for purposes of ore extraction, for purposes of getting waste into empty stopes, for the purposes of ventilation, or for the purposes of transporting men and material between different levels in the mine. They start out on the fill; they drill what they call the stoping machines. The other machines and cross-chutes are mounted on a bar. This machine is self-contained, and is better adapted to drilling vertical holes —vertical holes upward.

A man goes in, drills it, and, if the ground is good, he doesn't timber the hole case. He puts stalls across, which are supports between the walls, and in the good ground are used mainly as supports for ladders, to provide the men coming in—This raise is divided into two parts: One is a man-way, and the other is a chute. The chute portion of the raise is the part in which the rock above the raise passes through.

The man-way has a ladder in there and has access to the raise, and it also has timber-way in which supplies are

hoisted up. They hoist up supplies, timber, powder and steel with which to drill and blast the ground.

Q. All the drilling is done by the miner? A. Sir?

Q. All of the drilling of the stope, as well as the tunnel, is done by the miner? A. Yes. As a rule, there are both drift miners and stope miners. A man will have his working place and stay with it for various lengths of time. Other men who are on drainage have ditches to be dug, ditches to be cleaned out. The stopes must be timbered up.

I don't know whether I have made that stoping operation very clear. I have two different methods of stoping outlined on the maps there (indicating), which are available for you if you would care to see them.

Q. I believe the record is all right on that, although I shall want to look at your map.

Is there any other end of the mining operation which you think is important, which you have not mentioned? A. Well, there is the matter of drawing the ore from the pockets into the shaft into the skips.

Q. What is a skip? A. A skip is—well, we might term it a "bucket."

In the Junction shaft, these cages—one deck of the cage in which the men ride is swung off into a skip. It is an iron box, roughly 4 x 4, 6 feet high, which, depending on the nature and weight of the ore, will hold from 5 to 7 tons.

The ore is drawn. It goes first from the pocket into a cartridge, which is a measuring device. From that cartridge it is drawn by doors into the shaft and is emptied directly into the skip. After this skip is filled—or, rather, the cartridge emptied, the signal is given to the hoist engineer, and he hoists it to the surface, where it is automatically dumped.

The reason I say, "depends on where it is filled," is because the cartridges themselves are of different sizes, depending on the weight of the ore coming out of them—that is, in order not to overload the hoist engine.

For ventilation, there are fans. In the Junction, for instance, they are located on the eighteen hundred, two thousand, twenty-two and twenty-seven hundred levels. They have main ventilation fans that draw the air out of the shaft and pass it through certain areas through the mine to the up-cast or outlet shafts.

I might say here that we take a certain amount of air into the mine. We take it down through the Junction, Campbell and Sacramento shafts and transport it through the various workings underground, and the outlets for that particular area are the Dallas, Oliver and Gardner shafts.

In the Cole area, there is a separate ventilation unit from the system on this side. The air there is taken through what we call the Cole No. 3, and the Boras. It is discharged through the Cole shaft and a small amount of it through the White-tail Deer shaft.

It means that a miner going into the mines is, as a rule, going down into the fresh air.

Q. Is there any open-pit mining done at the Copper Queen Branch? A. There has been no open-pit mining done since about 1929 or '30, at which time the pit was exhausted and the shovels were taken out and the remaining ore at that time was what we call "glory-hold."

In the bottom of the pit, which was of more or less level floor at that time, there were 12 raises driven up from the 400-foot level, spaced about equally in the bottom of this area, and then these holes were widened out and the material shot into these raises, and it was drawn off through from the levels above and hoisted to the Sacramento shaft.

We do have one system that we are operating now, and that is the cave-in system, which has not been mentioned. There is a portion of the mine over there in which a block of ore is under-cut. By that, I mean we take this block of ore which is shaped, roughly, as this room is shaped. We drive a haulage level at various heights—I should say, from 50 to 150 feet above that, depending on the ore body.

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We drive what we call a grizzly level. There are raises connecting this haulage level and the grizzly level.

The purpose of these raises is to serve as ore passes from the ore above to the haulage level below. The purpose of the haulage level is to draw the ore off from the raises into cars where it can be transported to the shaft, where it is hoisted.

In the grizzly level we have smaller drifts driven across there and grizzlies installed. Our grizzlies are spaced 20 feet in one direction and 40 feet in another. The ore is drawn from what we call the under-cut level, 17 feet above the grizzly level, into this grizzly level.

The block there would be—assume the floor of this floor is the under-cut level and that each 20 feet here—that at 20-foot centers are small raises covering the entire floor of this building.

Around the outside of it on the four sides of it, we drive what we call a shrink. It is in height to the top of the ore body from the under-cut level to the top of the ore body. All around the wall it is from 3 to 5 feet in width, and the purpose being to cut this block of ore off from the remaining ore in the ore body, or from the waste material surrounding the ore body.

After these raises are up and the shrinks are driven, the tops of these raises are connected with small drifts running through.

As we have a grid in, we have this floor covered with a grid with small drifts running at right angles to each other on 20-foot centers. At each point at which these drifts cross, there is a raise which is a hole connected with the grizzly level below.

A. (Continuing) After that has been laid out, our small drifts and our raises run, then we run what we all call 'undercut stubs.'' These pillars that are left in there are approximately 15 feet square, and into these pillars we

drive a short-stub drift. It is approximately 7 feet wide, and we usually try to make it about 8 feet long. That depends also on the nature of the ground. After that has been driven into this square block of ground, then we drill out into the ground in all directions, the top and sides, but not the bottom. And after that is done, these holes are filled with powder and blasted, so we have a block in there about the size of this room, and the ore has been cut to the top of the ore along the side and the bottom has been shot out from underneath it, and that ore is drawn out through these raises to the grizzly sets where the boulders that are too large to pass through the grizzly are broken up and the remaining ore drawn to the haulage raises and out into the motor cars below.

Q. Now, you mentioned one thing before we actually got into the mine, a change room. What is that? A. A change room is a building where a man goes to work in the morning. He changes from his street clothes to his working clothes. He is provided with a locker, usually locked. It is numbered and each man has his individual locker. When he goes in there in the morning he changes his clothes, gets into his working clothes, goes down into the mine, comes up at night, and there are showerbaths there. He takes a shower bath. There is hot and cold water. He changes his clothes for his street clothes. In the morning he goes on, changes into his mining clothes, goes to the carbide house, fills his lamp with carbide, fills his lamp with water, and goes down into the mine.

We have some canteens in the mine now, and when a man goes to the Refrigerating Plant he fills his canteen with refrigerated water and takes it with him. This refrigerated water is also piped down to various levels, to different points in the mine. If they are too far away, where the water would get warm, it is drawn from pipes into tank cars, and these are placed at different centers in the mine

that are available to the different working points, places where the most men gather at different times.

A man is equipped with what we call a "hardboiled hat," hard-toed shoes and goggles. He is not allowed to go into the ground unless he possesses these. A hardboiled hat and hard-toed shoes are shoes and hats that are made of certain material so that they will resist falling rocks, avoid cuts, crushed heads and damage to the men. Those three items, the rules are that he must have those at all times. And the visitor, if you are supposed to be a visitor going underground, you are not allowed to go underground without a hardboiled hat and hard-toed shoes. The goggles, to the casual visitor, are not necessary. When a man takes his place underground, he eats lunch there. In certain areas there are lunchrooms provided. In other areas, where there is plenty of room and conditions are good, they are not—special lunchrooms are not provided.

Trial Examiner Kennedy: Mr. Persinger, I think we might take a recess at this point. We will be in recess for ten minutes.

(Whereupon a short recess was taken.)

Trial Examiner Kennedy: The hearing will be in session.

Q. (By Mr. Persinger) Will you tell us something about the water-pumping system, and the purpose of it. A. Water enters the mine up in the vicinity of Bisbee, the surface and underground water is—Go back there and just forget that.

You might say that the Czar shaft, which is the shaft in the town of Bisbee, the former operating shaft, has a depth of 400 feet, and the ore bodies lie deeper as we go off to the southeast. The 400 feet at the Czar shaft, the depth of that shaft, becomes 2700 feet level by the time we get to the Junction, which is about 2940 feet below the collar

of the Czar shaft. I am telling you that so you can get an idea of the way the ore bodies dip off to the southeast, and there is also a difference of about 230 to 240 feet in the levels of the same name in the southeastern part of the camp—not the camp up here. For instance, up here, the 400 level, 400 feet below the surface, that is south of this part of the camp and Junction, the 400 feet level would be 625 to 650 feet below the collar of the czar shaft.

Water originates in the mountains here, and is also taken through old workings where the surface has been fractured and flows in the Czar area to the 400-foot level. From there the water passes through a raise to the 600 level of the Holbrook shaft, passes from the Czar area over to the Holbrook area, is gathered in there and that water passes through a raise and goes to the 1000 level of the Gardner.

In the western part of the camp, that is, and the southwest, the Shadduck mines, the Irish Mag, Oliver, that water is collected on the 800 level of the spray and flows also to the 1000 foot leevl, joins with the water from the Czar and Holbrook areas and is led to the Gardner shaft on the 1000 level where there is a concrete bulkhead with control valves for letting that water out. That provides storage in times of flood for the waters from the western part of the camp, they can be shut off from the southeast.

From there the water—from the 1000 Gardner the water goes to the 1200 of the Lowell to the 1200 level and part of it to the 1400 level. It is taken across to the Lowell shaft, from there to the Sacramento and is led through various raises down to the 1800 level and is taken finally to the 2200 level of the Junction shaft where the main pumps are installed. Water is below the 2200 level, that water is led to the 2700 level of the Junction mine where there is an auxiliary pumping plant. The water from the 2700 level is pumped to the 2200 level into sumps provided for them

and from there it is pumped directly to the surface. The pumps at present have a capacity, I think, of between 8,000 and 8,500 gallons a minute. At present water pumped from the mine is between 5,000 and 5,500 gallons a minute.

Water from the Cole area is taken by way of the Briggs mine, thence to the Junction pumping plant and pumped to the surface. It is led by—from the surface the water is diverted to different parts of the district for irrigating purposes, and the balance is spilled out into settling ponds about four miles south of the town, in the flat between Bisbee and Bisbee Junction.

Ditches are provided also between the Campbell and Junction shafts on the 2200 level. We have a pipeline, part of it 10-inch pipe and part of it 12-inch pipe to transport the water because the ditches were not large enough and the workings were not large enough to carry it, so we carried that in this large pipe where they were draining, or attempting to drain, the extreme southeasterly part of the workings for future development.

Part of that—into all of these drifts, all of our drilling machines, underground, of course water must be piped, all water for the operation of drills, not only water, but compressed air. The drilling machines operate with compressed air and water. Compressed air and water must be available at all working places.

Q. Now, will you explain to us the various shifts and the times they come on, and the difference in their work, if there is any? A. The day shift comes on at the present time at 7:30 in the morning and comes up at 3:30 in the afternoon.

The afternoon shift goes on at 5:00 o'clock and comes up at 1:00 o'clock.

Shifts which are on a three-shift basis, as the Junction pump men and the Junction cagers, have a day shift and afternoon or night shift and a graveyard shift. Their hours

are from 7:00 to 3:00 and from 3:00 to 11:00, and from 11:00 to 7:00.

During the Summer those shifts are a half hour earlier, each shift goes on and comes off a half hour earlier.

Q. Do you remember the hours of the shifts and how many were being operated back in about July, in 1935; just before the walkout and strike? A. I think the shifts were the same summer hours. As a matter of memory, there has been no change. For one or two years we did go to work an hour earlier, I think. I am not sure on that, although I believe that half-hour has held for some years now, and so far as the nature of the work goes, it is no different. There are a few men on odd shifts, but comparatively few.

Q. Do you know how many men actually are employed at the present time on those different shifts, approximately? A. No, I do not.

Q. Now, will you tell us the geographical locations of the three towns in this series, and where the different four principal shafts are located with reference to the three towns? A. Well, the main town is Bisbee, the unincorporated town of Lowell, the center of it is about two miles in an easterly direction.

Q. That is down the mountain from Bisbee? A. Down the canyon.

Q. Down the canyon? A. Yes, sir; and the town of Warren is about two miles in an easterly direction, southeasterly direction from the town of Lowell. The Junction shaft is situated, I should say, on the southerly side of the town of Lowell.

The Sacramento shaft is about 2600 feet in a westerly direction from the Junction.

The Campbell shaft is about 2700 feet in an easterly direction.

The Cole shaft is, I should say, a mile in a southerly direction, maybe a little southwest.

Mr. Persinger: I know of no further matters that I want to go into at this time. Does counsel have anything?

Mr. Kitchel: I have a question which perhaps would help clarify this picture, Mr. Pidgeon.

Cross Examination.

Q. (By Mr. Kitchel) I wonder if you would give us something on the subject of safety and safety regulations in practice in the mines. A. The safety work? Did you wish to go into the whole set-up on that?

Q. Well, perhaps I should confine that a little more to some of the hazards and the rules which are laid down in order to avoid accidents with respect to those hazards.

Trial Examiner Kennedy: Well, counsel, I don't see the materiality of that line of questioning. If you can show me where it would be material——

Mr. Kitchel: Well, I thought it would be giving a little better picture of the actual occupations of the men in the mine, which I thought Mr. Persinger was apparently after. I have one particular question in mind, and I will confine myself to that.

Trial Examiner Kennedy: Very well.

Q. (By Mr. Kitchel) Do you have a safety rule with respect to the men working by themselves in the mine? A. There must be a man—the rule does not prevent a man from working alone, but there must be a man within call at all times.

Q. As a general matter, do the men work in teams or pairs, rather, not by themselves? A. Yes, they do, except in probably the driving of some drifts or crosscuts where there is a man goes in, sets up his drifts. The miner has a man to help him set up his drill; then he operates his drill alone, except for a visit of the tool-nipper, who is the man

who brings sharp tools in, takes away the dull tools; or, maybe, if there has not been sufficient steel or sufficient tools, he brings new tools that have been ordered.

If there is a timbered working, there a timberman goes in, or, a man goes in and gets his timber, and if it is heavy enough he gets aid to bring them. Then he is visited several times during the shift by the shift boss, and, as a rule, maybe once a day or maybe every other day, by the foreman. Then, when he sets off his blast, the rule is that no man shall blast alone. He must have help in loading his holes and in setting off his blast.

Q. Does cooperation between the men working together on any particular job have any bearing on the efficiency of the operation? A. Well, it certainly does. In any line of work, the men must get along together, or there is no such thing as efficiency. Those men must work together as a team.

Q. Does that cooperation have any bearing on the safety involved in the work? A. It does to a very large degree. The work of the two men in a working place is not always set out in detail by the boss, and as he tells what he wants done, at certain times he tells each man what he has to do. During the shift there will be odd jobs come up that the men decide among themselves which one is going to do that job.

I could picture in a stope where a man was going to be drilling, and if another man was going to bar down the rock under which the first man was going to work and didn't do a thorough job of it, he might put his partner in quite serious danger.

Q. Can you give any other examples of where that cooperation is essential to safety? A. Well, men drawing ore out of a chute, there must be good cooperation between the motorman and his swamper, who is the man that loads the ore into the cars. Any slight movement of that car while the ore was coming down might deflect a rock in such a way that it might hit the swamper.

A drill set up insecurely, not tightened thoroughly, might fall. A machine might fall and injure the driller.

Q. Mr. Pidgeon, going back to the geographical set-up of the properties, what, roughly, would you say is the total acreage covered by the various shafts? You confined your description before to the entire properties of the company. In other words, not perhaps the actual acreage, but it would be easier to give a description of the territory covered. A. Well, there are about 9,000 acres of patented mining claims. That's correct within a hundred acres either way. In addition to that, there are 3,200 acres of land that has had homestead patents or various patents of other nature. I should say, the extent in a northwest, southeasterly direction is about four or five miles. The extent in a northeast, southwest direction would be three to four miles. Various other properties that do not belong and which are not controlled by Phelps-Dodge lie in those boundaries. Some of that ground, Phelps-Dodge owns both mining and surface rights. Small portions of it, they own the mining rights and not the surface rights.

The land includes a small part of the City of Bisbee, all of the town of Lowell, all of the town of Warren, and a portion of the town—well, in fact, all of the townsite of Don Luis, or the Hedburg townsite, as we know it, south Bisbee, Tintown, and smaller little settlements.

Q. In addition to the four shafts which you have discussed, how many more are there; not by name, but by number? A. I should say there are a total of between 30 and 40 shafts.

Q. Do they extend throughout this region that you have described? A. Yes, they do. They cover the region quite thoroughly.

Q. At these various places and at other places, is there located property of the company; personal property, buildings and equipment? A. At certain points there are.

Mr. Kitchel: I think those are all the questions we have, Mr. Examiner.

Mr. Persinger: I have just one, Mr. Examiner.

Redirect Examination.

Q. (By Mr. Persinger) What is a swamper? A. What's a swamper? Perhaps I should say a helper. The motorman has a swamper. He is the man that helps him. The motorman runs the motor and the swamper pulls the ore out and makes up the train. He is practically the brakeman on that train.

Mr. Persinger: I think that is all.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: I have a few questions.

Examination by the Trial Examiner.

Q. (By Trial Examiner Kennedy) Will you describe the drift for us? A. A drift is a tunnel.

Q. Is that the name you apply to all tunnels in the mine? A. No, we call them indiscriminately "drifts" and "cross-cuts." Actually the words "drifts" and "cross-cuts" came from vein mining, which we do not have here; and a drift was the—I might say—tunnel or opening driven along the strike or along the length of the ore body.

The cross-cut was the opening driven at right angles to the drift and cut through the ore body or ore zone. Our ore bodies here are very irregular, and there is no such thing as a true drift or true cross-cut.

Q. But what you term a "drift" goes out from the stations that you spoke of, is that correct? A. Yes, sir.

Q. And the cross-cuts feed into the drift? A. It is actually an underground tunnel. I should say, the smallest are 5½ feet wide and 8 feet high. They may be in natural rock; they may be fully timbered. As a rule, sets of timber

are spaced 5 feet apart and a set is two posts, one on each side, with a cap across the top, and then what we call "lagging" is placed over the top, and also along the sides to prevent loose material falling off.

Q. Now, what is a stope? A. A stope is an extraction working from which the ore is taken for mining.

Q. An extraction work? A. An extraction working.

Q. Well, explain that in more common English. A. You go in and find the ore and develop it with the drifts and cross-cuts, and it is developed in different levels, or the ore body may lie between the levels. It may not go to either of the main levels.

Incidentally, have I made clear to you what a level is?

Q. Yes, I think so. A. And these levels are connected with raises. Then the openings, which are made in extracting the ore, are called "stopes."

Q. Made from any particular point? A. No. That depends altogether upon the method of mining that is used, which varies with the nature of the ground. Perhaps you could go into Inspiration and Miami, and they have nothing but drifts. As you go into Cananea, and it is mostly cut and fill and top soil. In Bisbee the ore bodies are so irregular, the nature of the ground varies so that we must use practically all methods, and the stope is the method of really mining the ore and getting it out and getting to the surface. That is the name of the working place for each and all of these various mining methods.

Q. What is the depth of these various shafts which you have described? A. The Junction shaft, the lowest level of the Junction shaft is the 2700 level. There is what we call a sump, which is 60 feet in depth, below that level. That provides a place for surplus water and stuff that falls and goes down in there. The cage, having two decks, a part must project down below.

In the Campbell shaft, the lowest level is the 2300 level.

G. C. Pidgeon—For National Labor Relations Board—Redirect.

In the Cole, the lowest working level is the 1400 level, although it goes down in depth to another level below there,—I think it is about 50 or 60 feet,—which connects a crossing with the Briggs mine, and thence into the Junction.

The lowest level in the Sacramento is the 1840.

Trial Examiner Kennedy: Any further questions?

Mr. Kitchel: No questions.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Evans: Do you want these maps?

Mr. Persinger: I thought we might look at them a few minutes, later.

Mr. Evans: All right, you may have them later. Do you need Mr. Pidgeon any more?

Mr. Persinger: No. Thank you very much.

Trial Examiner Kennedy: One thing more, for the record: What is your position?

Mr. Pidgeon: Chief Engineer.

Mr. Persinger: Mr. Examiner, the respondent has furnished me with a considerable amount of data and payroll lists covering a period of some months, and certain other material incident to the subpoena. In addition, counsel has informed me that a large mass of material has just reached him from New York, which will require a certain amount of time to segregate.

I would suggest at this time that we take an adjournment until Saturday morning. I think that it will save time in the long run. It will give us an opportunity to analyze this material which has just come in.

Trial Examiner Kennedy: Any objection to that?

Mr. Kitchel: That is agreeable with us.

Trial Examiner Kennedy: I beg your pardon?

Mr. Kitchel: That is agreeable with us.

Trial Examiner Kennedy: We stand at recess until 9:30 Saturday morning.

(Whereupon, at 11:25 o'clock a. m., an adjournment was taken until 9:30 o'clock a. m., Saturday, January 29, 1938.)

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Room 2-Cochise County Court House
Bisbee, Arizona
SATURDAY, JANUARY 29, 1938

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondents.

PROCEEDINGS.

Trial Examiner Kennedy: The hearing will be in session.

The Reporter has called my attention to the fact that in a portion of the transcript the Campbell shaft is referred to as "Camel," incorrectly. Its proper spelling is C-a-m-p-b-e-l-l.

We understand, then, that the transcript has been corrected to show the correct spelling. Is that agreeable?

Mr. Kitchel: That is agreeable.

Mr. Persinger: That is agreeable.

Trial Examiner Kennedy: Let the record so show.

Proceed.

Mr. Kitchel: Mr. Trial Examiner, may I make a motion at this time?

Trial Examiner Kennedy: Yes.

Mr. Kitchel: We assume that after Thursday's hearing the preliminaries are now over, and counsel for the National Labor Relations Board will proceed with his case. We would like, therefore, at this time to move that all witnesses who are to appear during the course of the proceedings be excluded from the courtroom.

Mr. Persinger: If the Examiner please, I do not want to take an unfair advantage of counsel. I think it only fair to point out that the Board has no witnesses in the connection in which he is using the words. All the Board's witnesses are complainants. They are parties in interest, and it would be a denial of due process to exclude any of them from the hearing at any time.

Mr. Kitchel: Well, the union is not the complainant. The National Labor Relations Board is the complainant.

Mr. Persinger: That is true, but they have a financial interest, possibly, in the order the Board may hand down.

Mr. Kitchel: As I understand it, the National Labor Relations Board is the complainant in this case, and the 48 men in the Appendix are their witnesses. Therefore, we stand

in the same position as any witnesses that respondent might use.

Trial Examiner Kennedy: Is there anything further that you may wish to say on this motion? (No response.)

I am of the view that respondent counsel is technically correct in stating they are parties in interest.

Mr. Persinger: Excuse me. Do you mean the Board's counsel or respondent's counsel?

Trial Examiner Kennedy: Respondent's counsel. The Board's counsel has also stated a quite obvious fact, that as a result of an order of the Board that certain of the men named in the complaint may become beneficiaries.

Is there any union representative who might be a witness in this case, Mr. Persinger?

Mr. Persinger: There is no one except the actual persons named in the appendix of the complaint, and Mr. Earl Worden, who has been included by stipulation.

Trial Examiner Kennedy: Mr. Earl Worden?

Mr. Persinger: He has been included in the case by stipulation as one of the complainants.

Trial Examiner Kennedy: And he is the only one that might be taken to represent a union, is that right?

Mr. Persinger: No, I don't mean that. Strictly speaking, there is no representative of the union who will testify. There is a representative of the union present, but he won't testify.

Trial Examiner Kennedy: Well, what prejudice would result to any of the persons named in the complaint if they were excluded while the testimony as to the activities regarding other persons named in the complaint is being given?

Mr. Persinger: That I couldn't say in advance.

Mr. Kitchel: On that point, Mr. Trial Examiner, I would like to explain the basis of our motion. We feel that here we have 48 men whose testimony, I assume, will be more or less the same all the way through, and we feel it desirable, under those circumstances, with the number of men involved,

that they appear in here not as a group but to get the facts on their individual case.

Trial Examiner Kennedy: Well, I am inclined to grant the motion of respondent's counsel, and the motion will apply to all witnesses in this case, no matter for whom they appear. The order will apply to all, either witnesses for the respondent or for the Board, and the rule will be that anyone can stay in this courtroom at any time, but if you remain in here except while you are on the witness stand you will not be permitted to testify in this hearing. After your testimony is finished, and it is so stipulated by both counsel, you may remain in the courtroom.

Do you understand, Mr. Kitchel, that that applies to your witnesses as well as the Board's?

Mr. Kitchel: Yes, Mr. Examiner.

Mr. Persinger: If the Examiner please, I offer as a final subdivision of Board's Exhibit 1, the order designating Mr. Thomas H. Kennedy as the Trial Examiner, assigned to this case on January 25, but which just reached me by mail yesterday.

(Passing document to counsel.)

Mr. Kitchel: We have no objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 1-J.

(Thereupon the document above referred to was marked as Board's Exhibit 1-J.)

Mr. Persinger: I offer as Board's Exhibit next in order the annual report of the Phelps Dodge Corporation for the year 1935, and also as Board's Exhibit next in order the annual report of the Phelps Dodge Corporation for the year 1936, both of which were furnished by respondent counsel.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: Mr. Trial Examiner, we do object to the introduction of those exhibits in evidence. They were produced under the subpoena, but we take the position that they

have no relevancy to this proceeding as affecting an unfair labor practice, and they would not tend to create an unfair labor practice disrupting commerce.

Trial Examiner Kennedy: May I see the reports?

(The documents referred to were passed to the Trial Examiner.)

Trial Examiner Kennedy: You do not take the position that they are not properly identified?

Mr. Kitchel: Oh, no.

Trial Examiner Kennedy: Is there any objection as to their authenticity?

Mr. Kitchel: No, Mr. Trial Examiner, purely the question of relevancy.

Trial Examiner Kennedy: The objection is overruled. They will be received in evidence as Board's Exhibit 6 and Board's Exhibit 7.

(Thereupon the documents above referred to were received in evidence and marked as Board's Exhibit No. 6 and Board's Exhibit No. 7.)

(Discussion outside the record.)

Mr. Persinger: Could we take a short recess?

Trial Examiner Kennedy: Yes; a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows):

Trial Examiner Kennedy: Are you ready to proceed?

Mr. Persinger: Yes.

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Henrie, will you take the stand, please?

H. C. Henrie, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

H. C. Henrie—For National Labor Relations Board—Direct.

Trial Examiner Kennedy: What is your full name, please?

The Witness: H. C. Henrie; H-e-n-r-i-e.

Trial Examiner Kennedy: H-e-n-r-i-e?

The Witness: Correct.

Direct examination:

Q. (By Mr. Persinger) Mr. Henrie, are you employed by Phelps Dodge Corporation? A. I am.

Q. In what capacity? A. General Superintendent, Mines Division, Copper Queen Branch.

Q. How long have you held that position? A. Since January 1, 1938.

Q. How long have you been employed in the Mines Division of the Copper Queen Branch? A. Well, I have been with the company since 1909. Now, the Mines Division was not established as such until 1930, I believe. Before that it was the Copper Queen Branch.

Q. Have you been employed in the Copper Queen Branch the entire time since 1909? A. Yes, yes.

Q. What position did you hold in June or July of 1935? A. 1935? Well, I had no title. I was just an assistant to Captain Hodgson, who was Manager of the Mines Division.

Q. Are you familiar with the various official positions in the Mines Division today, and as they existed in 1935? A. I am.

Q. And are you familiar with the authority which accompanies each position? A. I am.

Q. Who at the present time has charge of employing new men or re-employing former employees? A. Mr. Joe—I don't know his initials—Berlindas; B-e-r-l-i-n-d-a-s.

Q. Who held that position about June or July, 1935? A. M. A. Bateman.

Q. Does he have full authority to determine who shall be employed and who shall not be employed? A. He does.

Q. Did Mr. Bateman have that same authority in 1935? A. He did. Let me add this: that is, he has full authority.

Of course, you have general policy instructions, such as—well, we don't want any men hired, or hire only miners, or it might be hire only muckers or inexperienced men. But he has charge of employment, barring those general instructions.

Q. In other words, when men are needed he determines which individual shall be employed to fill those positions, is that correct? A. That is correct.

Q. Now, at the time when new employees are needed in some department— A. (Interrupting) That very largely is related to your production schedule. Naturally, the more produced the more men you would need, and, conversely. As the production schedule is cut, production is cut, I should say, less men are needed.

Q. Now, who determines the production schedule? A. The management.

Q. Do you mean the officials of the Mines Division? A. Not entirely. Your production schedule, of course, would be based—I am speaking now for the corporation.

Q. Yes. A. On the amount of copper which they figure they could sell. Then, the production would be allocated to the various branches. We would be instructed to produce so many million pounds per month until further advised.

Q. Now, who would give you those instructions? A. The General Manager of the corporation.

Q. And who is he and where is he located? A. Mr. H. M. Lavender, General Manager. He is located, his headquarters are at Douglas.

Q. And do you happen to know whether or not the instructions reach him from the New York office, or whether he confers with the officials in New York on these schedules? A. Oh, certainly; he has to.

Q. And when you receive instructions from Mr. Lavender to increase or decrease production, is the number of men to be laid off or to be employed determined solely by the management of the Mines Division? A. Yes, sir.

Q. And then, having determined the number, the Employment Manager determines the individuals? A. Determines what?

Q. The individuals to be either laid off or employed? A. No, you might—You would, on employees; yes. On a layoff we generally work along general policy lines. Single men, short-service men, are laid off first. Then comes other service groups, single men; then, of course, in the case of a very drastic layoff it would be shorter term married men. We have always worked it that way.

Q. Is it customary for the Employment Manager, in selecting the individuals whom he is going to hire when he needs more men, to confer with other officials of the Mines Division as to which individual shall be employed? A. He would, in some cases. Now, take the case of a—oh, mechanic. Let's say a diesel engine operator. He would hardly be qualified, and in that case the man would be sent to the Master Mechanic, who would talk with him and see whether he is qualified. That might—that would apply, perhaps, to machinists and certain others.

Q. Would it apply to miners, normally? A. No.

Q. Or muckers? A. No.

Q. Or motormen? A. No.

Q. And, of course, not to the helpers? A. Oh, no.

Q. Now what—First, who has charge of the payroll? That is, making up the payroll and keeping a record of the day's employment, and the time of the men, so as to make out the pay checks? A. The Paymaster.

Q. And who is the Paymaster at present? A. Well, Mr. E. C. Hicks is Paymaster for the company. He has been quite ill for a few months. He is back at work now, but we would say that he is Paymaster.

Q. You say "for the company." You mean just the Mines Division? A. Just the Mines division; that is all we handle.

Q. Now, who was paymaster as of June or July, 1935? A. I believe Mr. Hicks was; in fact, I am quite certain Mr. Hicks was Paymaster at that time.

Q. Now, what employment records are kept on each individual employee? A. Well, you have a record of—well, what we term the "Employee's Service Record Card." There are quite a few things on there. It is a card—I believe you have one in your hand there. I could identify that and save time.

Mr. Persinger: I will offer this card for identification as Board's Exhibit next in order.

Trial Examiner Kennedy: What number will that take, Mr. Reporter?

The Reporter: Board's Exhibit 8.

The Witness: That is what we term the service card.

Trial Examiner Kennedy: Repeat it for the record, please.

The Witness: That is the service record card.

(Thereupon the document above referred to was marked as Board's Exhibit No. 8 for Identification.)

Q. Now, are you familiar with the symbols used to indicate different matters on this card? A. Oh, I think I am.

Q. This card represents the record of what individual? A. Tom Abedin; A-b-e-d-i-n.

Q. Following his name appear two numbers: 1190 and 1014. What do they mean? A. That is his payroll number; check number.

Q. Is that number given a man when he is first employed by the company? A. It is.

Q. Is it ever changed thereafter? A. It is.

Q. On what occasions is it changed? A. Each operating division or department of the mine has a block of numbers. To illustrate: One division, we would say, would start at 1, and perhaps at 600. The next division would

pick up at 800 and perhaps run to 1500, and so on until every department was covered.

Q. I see. Below his name appears "Previous Record," and 11/16/25. What does that mean? A. I would read that, that this man was employed November 16, 1925, and has been on the payroll since that date. Now, let me modify that.

Q. Surely. A. He may have left, perhaps been away for two or three months, and then back again.

Q. Below that appears "9½ years service with C. & A. prior to merger." A. That was service of this man with the C. & A. Mining Company. There was a merger between the Phelps Dodge Corporation and the Calumet & Arizona Mining Company, and I think it was October, 1930, although I may be off there. It may be 1931. I would have to check that date.

Q. That is all right.

Below that appear a number of columns, the first headed "Date," and under "Date" the first date is 11/18/31. Following that, the column "Employment Record," and the word "Re. Inst"; following that, the column marked "Occupation," and under that the word "Miner," and then a column marked "Number," and under that "1190"; a column marked "Boss," and under that "Fisher"; a column marked "Remarks," and under that "Request of Lavender," and then two blank columns.

Now, will you interpret that line?

A. I would read that this way: On November 18, 1931, the man was reinstated, which leaves the inference that he had been out of service. He was reinstated to the occupation of miner. 1190 was the payroll number given him. Fisher was the boss.

Q. Does that mean shift boss or foreman? A. Well, I would say in this case that means foreman.

Q. Foreman? A. And at request of Lavender, that would seem to indicate that Mr. Lavender, who is Superin-

tendent at that time, had requested that this man be reinstated. He probably rustled Lavender for a job.

Q. Judging by that date, November 18, 1931, could that have been merely formal reinstatement in view of the fact that the merger may have been about Octobr 31st? A. He may have been laid off then, you see. I haven't got the information here, and then reinstated. There was quite a lay-off at that time.

Q. I see. Will you interpret the next line below that? A. On March 8, 1932, evidently this man was discharged by Fisher on account of a reduction in force.

Q. That "R. F." under "Remarks" means "Reduction of "Force"? A. Yes.

Q. Then under "Character of Service," the following column, is "stoping and clean-up." Does that mean the actual work that he performed? A. At the time he was laid off he was evidently stope miner and on clean-up work, and Sharp was his shift boss.

Q. I see. The bosses listed under the final column, then, are shift bosses? A. It is in this record. I don't know whether that would be true of all of them.

Q. It would not necessarily be true of all of them? A. I don't know.

Q. What would the next line mean? A. Well, then, on February 13, 1934, he was reemployed again as a miner, given the payroll number of 1514, sent to Mr. Fisher, foreman, at the request of Fisher.

Q. And then the final line? A. On June 10, 1935, he quit the service of the company. He was a miner, payroll number 1014; Marshall was his foreman. Remarks: Walked out when strike was called; picketed all during strike."

Q. The lower half of the same face of this card is headed: "Record of absence." On the first block under the year 1932 appear the figures, "86," and "8." Can you tell me what they mean? A. I would read that opposite the month of January, "8," and "6,"—not "86," meaning that

the man worked 8 days in the first half and 6 in the second half of the month. That is, our periods run from the 1st to the 15th, inclusive, and from the 16th until the end of the month. I would read that, "8 days work in the first half and 6 days in the second."

Q. And opposite the month "February," the figure would indicate "8 days missed during the first half," is that correct? A. Yes—No, I would say worked.

Q. Oh, 8 days worked? A. Yes.

Mr. Persinger: Off the record for a moment.
(Discussion outside the record.)

Q. (By Mr. Persinger) Now,——

Trial Examiner Kennedy: On the record. Whenever you gentlemen want to go off the record, address your request to the Chair, please.

Q. (By Mr. Persinger) Now, on the reverse side of this card I think the meaning is clear until we reach the lower portion marked "Accident Record." Now, following that, in the same line, appears: "10/17/34—FAC—#1739." Can you tell me what that means? A. My answer to that would be that that must be the man's Social Security number, although I don't know whether we had registration in '34 or not.

Q. Well, I should ask that, then, of the employment agent? A. The Employment Manager.

Q. Now, below that there is a column headed, "Honor Roll Record," and the first line in that column is: "4/1/32 Sixth Year." Now, what does that indicate? A. I would read that as meaning that the man has worked 6 years without a lost time accident.

Q. And the line below that? A. Well, he must have had an accident of some nature in there because this line says: "Less than 1 year," and it is 2 years later, you see.

Q. So that by '33 he probably had an accident? A. And started over again, or he may have left the service.

Q. I see. And the final line: "4/1/35—First Year." A. Well, he has completed, let us say, the second cycle, a full year, without a lost time accident on 4/1/35.

Q. Now, what significance, if any, does such an honor roll record have, in the opinion of the company, as to the ability of the man or his efficiency and safety? A. It is purely a safety record notation. It comes about this way: In the effort to enlist the cooperation of employees in safety work, some years ago a system was established whereby men who worked a year without a lost time accident would receive an award, termed a "safety award." Then, if they went two years, there was another award. Then three years another award, and so on up the scale.

Q. And is that considered a matter of importance by the company? A. Yes. We endeavor to eliminate all the accidents we can, and we want the employees' cooperation in the work.

Q. Well, to put it another way, would the company consider that a man was not a desirable employee if his accident record were bad, if he had many accidents? A. That would depend, of course, on the nature and the kind of circumstances surrounding the accident. Many accidents are not the man's own fault.

Mr. Persinger: I offer that card marked for identification as Board's Exhibit next in order in evidence.

Trial Examiner Kennedy: You offer it in evidence? Have you presented it to respondent's counsel?

Mr. Persinger: Counsel has seen it.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 8.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 8.)

Q. (By Mr. Persinger) Now, what other records of employment are there, Mr. Henrie? A. Well, there is a record of physical examination, which is made by the examining physician.

Q. Any others? A. (No response.)

Q. Is there any record of a man's efficiency rating, or do you have anything of that sort? A. When a man leaves the service of the company, he gets a slip from the boss signed by the foreman. One-half of this slip is a time record, which is signed by the employment agent, and the man presents that at the office so that the Paymaster can get the last shift worked and make out his time. The other half of the slip is labeled: "Character of Service." That slip would indicate the work the man was employed on, perhaps the remarks "Good," "Average," and "Poor," or whatever notation of that nature the boss might make.

Q. Now, who has charge of the employment records such as Board's Exhibit 8, and of these time records and character of service records? A. The employment agent has charge of all those records.

Q. And he did have, in July, 1935—— A. Well, we had a Mr. Bateman; of course, he had charge in 1935, and Mr. Berlindis, oh, say, in the last six months, perhaps a little longer.

Q. Now, how are time records kept? A. It is the time card system. A man—an employee going on shift in the morning receives a card and number. And on this card is indicated his wage rate and a place for the segregation of his time. Then these cards are signed or okayed, I should say, by the boss, some time during or at the end of the shift. The cards then go to the payroll department. They serve as a record of time worked; also a segregation of the man's time to certain accounts.

Q. Does the man also fill out his card? A. He is supposed to.

Q. And under whose jurisdiction are these time cards? A. The chief clerk and paymaster.

Q. Is that one position, chief clerk and paymaster? A. No, sir.

Q. Two different clerks? A. No, the paymaster, of course, is the man in charge of all time cards and payroll.

Q. And the chief clerk is under the paymaster? A. No, over him.

Q. Over the paymaster? A. Yes.

Q. Do you know who made up the various lists of employees which were submitted in answer to the subpoena? A. Mr. Bateman.

Q. Now, when there is to be a transfer from one shaft to another, who has charge of directing such transfers? A. I would say there is no set rule. Transfers would come about like this: The foreman of one shaft may be starting some new work or, perhaps, increasing operations at that shaft. He would take the matter up with the general foreman, telling him he needed additional men, would like to have, for instance, four miners, five muckers, or he may be doing some special work like, oh, repairing the shaft, in which case he, of course, would ask for shaft repairmen.

Q. And whom would he ask? A. The general foreman.

Q. Who is the general foreman? A. We have two, Mr. Jack Fisher and Mr. Roy Walton.

Q. I believe Mr. Walton was foreman at the Sacramento shaft? A. And Porphyry Divisions.

Q. Mr. Fisher of the other shafts? A. Yes; Junction, Campbell and Cole shafts.

Q. To take a specific instance, when the Cole shaft was first opened some years ago and, necessarily, you have to move a large body of men into it, who determined which men would be transferred? A. Well, the history of the Cole shaft was something like this: The first job there was repairing the shaft, as I recall. No doubt, the Mines Superintendent selected Mr. Rattery, who was an old boss. Then between Mr. Fisher and Mr. Lavender, no doubt, they selected two or three shaft repairmen and placed Rattery in

charge of the job. Then the natural sequence from there would be, as repair work progressed, the repair of certain drifts, clean-up. No doubt, they would ask for—Mr. Rattery would ask then Mr. Fisher for drift repairmen—repair miners. Then you get to the point where, possibly, production started. Then he would want miners and muckers. He would make this request to Mr. Fisher, general foreman, who, in turn, would see his other foremen and say, They want so many miners, so many muckers at the Cole.

Q. And the other foremen then would select among the men any men working under them to go over to the Cole? A. Yes, except in the case of what we might term, oh, "specialists"—that is a poor word. But, oh, shaft repairman, or certain individual miners as repairmen. No doubt, Mr. Fisher would dictate pretty much on that small group who would be sent.

Q. Who has authority to grant pay increases? A. Are you speaking of salary or hourly rates?

Q. Hourly rates. A. The hourly wage rates are fixed. If a man is employed as a miner and doing miner's work, he automatically takes the rate.

Q. How would a man move from miner to a job which would pay a higher rate? A. Well, let's put it this way, if I may: A man starts as a mucker, promoted to miner.

Q. Who promotes him? A. The foreman on recommendation, no doubt, of the shift boss. In other words, he just changes the man's classification and rate. The rate is already established—changes his rate to the miner's rate, and changes his occupation to miner.

Q. Customarily when a man is discharged, who recommends that discharge? A. Either the foreman or the shift boss; generally the shift boss.

Q. Who has final say? A. Well, the foreman, of course. If the man feels that he is getting a little the worst of it, he will discuss his case with the employment agent; or, if it looks as though the man really has something to kick

about, the employment agent would then discuss the case with the foreman and the general foreman, and the outcome of all that would be that the man would be given another chance, or else the discharge would stick. Sometimes the men go farther up the line and the management investigates the case. They would, particularly if he was a long-service employee.

Q. Is the same true in the case of lay-offs, that they are recommended by the shift boss or the foreman, other than the general policy which you have already mentioned? A. (Pause).

Q. Let me put it a different way: The general policy, first, is to lay off men of short service. Suppose there are a hundred men of short service and you want to lay off 50. Who recommends which 50 will be laid off? A. Well, you can generally get your 50 by splitting down the months, you see.

Q. I see. A. I might add to that, also, that in connection with lay-offs there have been times when, oh, you might say, the foreman turned in a list of what they term "weak sisters"; nothing perhaps that would warrant a man being discharged for, but you always have men who are not as efficient as some others. But the general policy on lay-offs is along the line I mentioned.

Q. What, exactly, is the distinction between a lay-off and a discharge? A. Well, a discharge, in my mind, is discharge for cause; a man not doing enough work, breaking some rule or committing some act which he should be discharged for.

Lay-off, you would have two classes in the lay-off: One group, as I just mentioned, whose work may not be up to that of better workmen; and, secondly, just an arbitrary lay-off because you haven't got enough jobs for the men.

Q. Would the payroll employment records show a distinction between those two classes of lay-offs which you have mentioned? A. I doubt it.

Q. In other words, in Board's Exhibit No. 8 there is a notation "R. F.," which you said means "Reduction in Force." A. Yes.

Q. Now, that could either be a lay-off following the general policy because the man happens to come in that group which is first to be laid off, or it could be a lay-off on the recommendation of the shift boss, that he was not one of his better workmen? A. Correct.

Q. And there is no way of reading the card which it would be? A. At least I couldn't. Perhaps the employment agent could tell you, remembering the case, or something like that.

Q. I see. Is a man dropped from the payroll when he is laid off, or does his name continue to be listed on the payroll each week? A. A man is technically dropped from the payroll the minute we receive notice from the boss that John Smith has been laid off or discharged.

Q. A man, then, can be laid off without the paymaster or chief clerk knowing anything about it until the formal report comes through to him? A. Yes, but that shouldn't be over a couple of days.

Q. I see. Normally do those reports come through to the General Manager of the Mines Division? A. No.

Q. In this case, yourself? A. That is, we do get a report each 10 days showing the number of men on the payroll in the various departments, the number of entrances and the number of terminations during the month, and at certain times, principally when you are reducing the force in order to just keep us up to date, we might get certain reports at more frequent intervals—in other words, to see how fast a lay-off is progressing and how fast we are getting to a given point.

Q. By the way, what was the total number of employees at your last report? A. January 1st, total number of employees, all departments, Mines Division, 1414 men, I believe; very close; within a man or two.

Q. Normally, in case a man is discharged, is the same procedure in regard to the records followed as in the case of a lay-off, namely, that the chief clerk and paymaster may not know about it until a day or two after the actual discharge had occurred? A. I would say so. Generally, the man goes up and gets his money as quick as he can. In that case, they would know it in a few hours.

Q. By the way, what are the regular paydays? A. Two a month: On the 6th of the month and the 21st of the month, unless holidays or something interfere.

Q. And the paydays were the same in June and July of 1935? A. Yes.

Mr. Persinger: I believe that is all, Mr. Henrie. I am very much obliged to you.

Mr. Kitchel: Might I ask Mr. Henrie a few questions just to clear up?

Trial Examiner Kennedy: Yes.

Cross Examination.

Q. (By Mr. Kitchel) Mr. Henrie, in answer to the question of who prepared the records that were submitted to counsel under the subpoena, as I recall it, your reply was "Mr. Bateman." Did anyone assist Mr. Bateman in that preparation? A. Oh, yes. Mr. Belindas worked with him. Perhaps I should have said, they were prepared jointly by Mr. Bateman and Mr. Belindas.

Q. In answer to counsel's question, you gave your recollection as to the last payroll count. Has there been a reduction in force over the last few months, Mr. Henrie? A. There has.

Q. When, approximately, did that reduction start? A. Oh, I would say October 1st.

Q. What has been the general rule as to hiring men since that date? A. Oh, we issued positive orders that no men were to be employed.

Mr. Kitchel: That is all, I believe.

Mr. Persinger: I have just one more question.

Q. (By Mr. Persinger) Who is the chief clerk? A. Mr. L. T. Buell.

Q. And was he chief clerk in June and July of 1935? A. He was.

Mr. Persinger: That is all.

Mr. Kitchel: Mr. Trial Examiner, may I ask that counsel extend Mr. Henrie this courtesy: He is pretty busy with his job, and is underground at various times during the day. If counsel will want him at other times for additional information, I would ask that he give us some notice in advance.

Mr. Persinger: We will be glad to.

Trial Examiner Kennedy: You are not excusing him permanently, then?

Mr. Persinger: So far as I know at present, we are excusing him permanently. But we will not need him further at the present time.

Trial Examiner Kennedy: You will recall him, then?

Mr. Persinger: Yes, if we need him.

Trial Examiner Kennedy: You are now excused.

(Witness excused.)

Mr. Persinger: Call Mr. Day.

W. M. Day, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: W. M. Day.

Direct Examination.

Q. (By Mr. Persinger) Mr. Day, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by that company? A. I were employed April 18, in '29, at the Junction, by the C & A.

Q. And, after the merger, did you continue at the Junction shaft under the Phelps Dodge Corporation? A. For the time being; then, I was transferred to the Campbell shaft.

Q. And did you continue to work in the Campbell shaft for the rest of your service with Phelps Dodge? A. No, sir; I worked at the Campbell shaft until the latter part of April of '35.

Q. And where did you work after that? A. At the Cole shaft.

Q. And when was your employment with the company terminated? A. June 6th, of '35.

Q. And just what were the circumstances under which it was terminated on June 6, 1935? A. I was discharged.

Q. By whom? A. By the mine foreman, by the name of Mr. Ratteree.

Q. What time of day were you discharged? A. Coming off the shift.

Q. What shift did you work? A. I worked day shift.

Q. And what time did you come off shift? A. 4:00 o'clock, I believe.

Q. Was anyone present at the time of your discharge, other than yourself and Mr. Ratteree? A. Well, a cage load of men got off at the same time I did.

Q. Where was Mr. Ratteree? A. He was standing in front of the cage.

Q. And what did he do and what did he say? A. He handed me a card, and I asked him what it was, and he said, "I don't know."

Q. And was anything further said by either of you? A. Nothing at that time. I taken the card and went on to the change room.

Q. And after you left the change room what did you do with the card, if anything? A. I came back out and went and seen Mr. Ratteree after coming out of the change room.

Q. Where did you find him? A. I found him out in the yard.

Q. Was anyone else present at that time? A. No, I don't believe there was.

Q. And what was said at that time? A. I asked him what this meant. I didn't know what it meant, myself.

Q. What did he say? A. He says, "It's just a card that recommends a discharge, is all I know."

Q. Was anything further said by either of you? A. No. I turns and went back to my car and drove over to the mine office at the Junction shaft, near the Junction shaft. And I went in Mr. Bateman's office, the employment agent, and I says, "I have a peculiar card here."

Q. Wait a moment. Did you speak to Mr. Bateman himself? A. Yes.

Q. And was he in the office? A. Yes.

Q. Was anyone else present? A. No one else in the office.

Q. And what did you say to him? A. I says, "I have a peculiar card here and I don't understand what it is." He says, "Yes, you are fired."

I says, "Well, I cannot find out what it's all about. Are you man enough to tell me what I am fired for?"

He says, "Yes; it's through intimidation."

Q. Did he say what he meant by that? A. No, he didn't.

Q. Did you ask him what he meant? A. No, I didn't.

Q. Was anything further said by either of you? A. There wasn't another word spoke. He taken that card and went into another room, and in a moment he came back out with my time slip.

Q. And what did you do? Did he give the time slip to you? A. Yes.

Q. And what did you do with it? A. I kept it approximately a week and came up to the office and drawed my time.

Q. Are you a member of the International Union of Mine, Mill and Smelter Workers, Local No. 30? A. Yes.

Q. How long have you been a member? A. Since September, 1934.

Q. You were a member, then, at the time of this discharge? A. Yes.

Q. Have you been a member continuously since then? A. Yes, sir.

Q. Did you report to your union that you had been discharged? A. I did.

Q. Did the union take any action? A. Yes, sir.

Q. Were you present when that action was taken? A. Yes, sir.

Q. When was it taken? A. It was taken the following night, the night of the next day.

Q. That would be June 7th? A. Yes, sir.

Q. Do you remember what day of the week that was? A. That was on Friday.

Q. And what action was taken at that time? A. We called a mass meeting.

Q. Do you remember who called the meeting? A. It were called by the President, the Vice-President, and the Secretary.

Q. And who were they? A. Earl Morrison, was President, and Henry Hanson was Vice-President, A. W. Potter was Secretary.

Q. And what took place at the general meeting? A. We held a strike vote.

Q. Do you mean a vote was taken as to whether or not to strike? A. Yes, sir.

Q. How was that vote taken? A. It was taken on the usual form of a blank paper, and you write "strike" or "not strike."

Q. And do you know the outcome of that vote? A. Yes, sir.

Q. How did it come out? A. Almost unanimous.

Q. For what? A. Strike.

Q. Strike? A. Yes, sir.

Q. And was a strike actually called? A. Yes, it was.

Q. When did it become effective? A. It became effective at 7:00 o'clock Monday morning, June 10.

Q. And was any picket line established at that time? A. There was.

Q. Were you on the picket line? A. Yes, sir.

Q. Thereafter, do you know of your own knowledge how long the picket line remained on duty? A. The picket line remained on duty continuously from then until August 24th of the same year.

Q. By "continuously," do you mean all 24 hours of the day? A. Not 24 hours of the day all the time, but a part of the time was 24—not 24 hours; I would say approximately.

Q Was there, to your knowledge, a picket line substantially every day during that period from June 10th to August 24th? A. Every day the mine worked.

Q. That is, there was no picket line on Sundays or holidays? A. No,—with the exception of one or two days, there would be pickets there.

Trial Examiner Kennedy: Just a moment. There is no smoking permitted during the session. Proceed.

Mr. Persinger: Will you read the answer? I didn't get it.

(Whereupon the answer was read by the Reporter as set forth above.)

Q. (By Mr. Persinger) To refer back to the time of the strike vote: Was any discussion had at that meeting as to why the strike vote should be taken? A. There was.

Q. Who discussed it? A. Different ones discussed it; I couldn't recall the names.

Q. The names of any of them? A. Myself, for one, was namely——

Q. And what was the gist of those discussions, if you remember? A. That the time had come that something had to be done immediately. We couldn't stand for this slaughter, was the words that was brought up. They are canning men in groups, and it was a matter of a very few days until all union men would go in the same manner.

Q. You say "men were canned or fired in groups." Were others fired the same day that you were? A. There was six others present at that time that was fired, three others were coming off shift and four were going—three were going on, I would say. One of the men that they had the time slip for was off sick.

Q. Do you know all of those men who were fired that day? A. Yes.

Q. Were all of them union men? A. Yes, sir.

Q. Do you remember their names? A. Jack Connett was the one that was off sick. Vivian Crandall and Levi Crandall —John Lutcavich, Art Hall, and one of the boys by the name of Hawkins.

Mr. Persinger: Did the Reporter get those names?
(Discussion outside the record.)

Q. (By Mr. Persinger) When was it you said you were transferred originally from the—to the Cole shaft? A. It was about the last of April.

Q. And prior to that time you worked at the Campbell? A. Yes, sir.

Q. And what was your salary classification, and what rate were you receiving at the Campbell? A. $5.24.

Q. And what was that classification, what was your job? A. I was motorman.

Q. And was any change made in your job or your rate of pay when you were transferred to Cole? A. They rated me back as a mucker.

Q. And what did that pay at that time? A. I don't remember what mucker's pay was, but it's easily translated

there. Motorman was 24 cents more than a miner and the mucker was, I believe, 40 cents less than a miner.

Trial Examiner Kennedy: Forty cents an hour less?

The Witness: On the day.

Trial Examiner Kennedy: Forty cents a day less?

The Witness: Yes.

Trial Examiner Kennedy: And that $5.24 you mentioned was $5.24 a day, is that right?

The Witness: Yes, $5.24, and the mucker's rate was around 60 cents less on the day.

Q. (By Mr. Persinger) Did you make any complaint about that reduction? A. Yes, I went and seen Bateman about it.

Q. Where did you see Mr. Bateman? A. He was in the Copper Queen Hotel.

Q. Was anyone present besides the two of you? A. No, there was no one. I believe there was some stranger there, I don't know who it was, some other one was with Bateman.

Q. What was said? A. I asked him, Why they had cut my rating back to mucker's pay if I worked there all these number of years and built up to a higher wage?

He said, "Well, I don't know, but," he said, "we'll fix that up."

Q. Was it fixed up? A. Yes, they straightened that out.

Q. Was anything further said? A. I said, "It is hard to understand why you men would be discriminating against me, and you send me over there to the Cole shaft and we realize what that means and," I says, "I have never taken no active part in this organization against the company."

Q. What organization did you refer to? A. The Miners' Union.

He replied—he said, "What about that speech you made at the hall last Sunday?"

I said, "Well, that was not on the company property."

Trial Examiner Kennedy: Who was this that you were conferring with?

The Witness: Mr. Bateman.

Q. (By Mr. Persinger) Was anything further said? A. No, that was about all that was said at that particular time, as I recall. We talked along there for possible 30 minutes. We had a little socialism together.

Q. Now, following the beginning of the strike on June 10th, you have already stated you were on the picket line substantially every day thereafter until August 24th. At any time during that period did you individually, or as a representative, apply for your job back, or the jobs for anyone else? A. I did.

Q. When? A. The first time I applied was on or about the 21st of August.

Q. What were the circumstances surrounding that application? Where did it take place? A. At the employment office.

Q. Inside or outside? A. Outside.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where was he standing? A. He was standing on the platform in front of his office.

Q. Was anyone outside with you at that time? A. Yes, there was a number of men with me.

Q. Were there any of your fellow-pickets? A. Yes, I would say 25 or 30.

Q. Were there any other persons who were not members of the union, to your knowledge? A. Yes, there was that many, or more, outsiders.

Q. Were you present when Mr. Bateman came out of his office onto this platform? A. Yes, sir.

Q. What did he do and say when he came out? A. He walked out, as usual, on this platform. He did that every morning, looked the crowd over, and he said, "Is there any miners here?"

Q. Now, just a moment. You said he did that "as usual." Why would he come out and look over the crowd? Do you know? In other words, what type of a crowd was it? What was their purpose in being there, if you know it? A. Well, there was fellows up there rustling, mostly high school kids.

Q. What do you mean by "rustling"? A. Seeking employment.

Q. I see. To come back to August 21st, there was a crowd composed practically of persons looking for employment and partly pickets, is that correct? A. Yes, sir.

Q. And Mr. Bateman, you say, came out onto the platform and said what? A. He said, "Is there any miners here?"

Q. Did anyone reply? A. I was the first man that spoke up. I says, "Yes, quite a bunch of us. How about a job?"

He says, "Nothing doing."

Irving Caldwell was standing by the side of me. He was a miner; he was a striker.

He says, "What about my job?"

And from that it was repeated on up. They was kind of in a line on the outside of the young kids there. We call them "rustlers."

Q. In other words, the crowd was of two groups: The rustlers close to the porch, and the pickets behind them away from the porch? A. The pickets were on outside of the crowd that come up there to rustle.

Q. I see. A. What you might say, in the same group. However, they were closest.

Q. And others called out, "What about my job?" A. A good many others called and says, "What about my job?" It was repeated right on around.

Q. Did Mr. Bateman make any reply? A. He says—shook his head. He says, "There's nothing doing." He says, "You fellows will never work for the Phelps Dodge Company again."

I says, "Wait a minute! Now, just who do you refer to as 'You fellows'?"

He turns back to me and he says, "You strikers."

Q. Was anything further said? A. Yes.

I said, "Well, you must have told I. V. Pruitt that. He has informed two or three times the boys that we could never go to work again."

Q. Did Mr. Bateman make any reply? A. He said, "I never told Pruitt that, but," he says, "I'm telling you," just in about that tone of voice.

Q. Was anything else said? A. Well, there was nothing else said. Of course, there were small remarks, naturally, that I couldn't recall from the boys, but he went to pick them out.

He says, "You come in here."

He would stand and look around.

He says, "You come in. You come in."

Q. You mean, he would point each time? A. He would point that way. (Illustrating) He would point to a certain individual. He called 10 or 11 kids in the office, and some of them that he called in went to work that afternoon with their hard-boiled hats and their shoes under their arms.

Q. Did you know any of them by name? A. No, I didn't know the kids.

Q. Did you at any time after August 21st apply to Mr. Bateman or any other official of the company, either by yourself or with others, for reinstatement or re-employment for yourself or for any of the other strikers? A. Yes.

Q. When? A. On or about the 23 of August.

Q. That would be about two days later? A. Yes.

Q. Who was with you, if anyone? A. A. B. Porter.

Q. Was he a member of the union? A. Yes, sir.

Q. Did he hold any official position? A. He was Secretary.

Q. Anyone else? A. P. C. Lytle.

Q. Was he a member of the union? A. Yes, sir.

Q. Did he hold any official position? A. He had all the way through up until about a week before the strike was called. He was Treasurer.

Q. But at this particular time on August 23rd he was not an officer? A. He was not, no.

Q. Anyone else? A. That was all.

Q. The three of you? A. Yes, at that time.

Q. And to whom did you call on? A. We called on Mr. Pat Henrie.

Q. Where? A. At his office.

Q. Was there anyone else present? A. Mr. Barkdoll.

Q. Was anyone else present? A. No one else.

Q. Do you know what position Mr. Barkdoll held at that time? A. He was General Manager of the Mines Division of the Phelps-Dodge.

Q. What was said when you called on Mr. Henrie and Mr Barkdoll? A. We went in. I had made the arrangements by telephone a couple of hours before—approximately that much—to meet with Mr. Henrie, and when we went up there he invited us to come on right up.

We went in, and Mr. Barkdoll was there. He says, "Come right in, gentlemen. Take a seat there."

He says, "What was you wanting to see me about?"

Mr. Lytle spoke up and said, "Mr. Day has called the conference and," he said, "he's the spokesman and he'll do the talking."

I said, "We merely come up to talk things over and see if there was any chance of getting together and settling this labor dispute, or what the chances was"—what they are—"for these men going back to work."

And they sit there waiting for something else, and I said, "I want to ask you men a question: Do you want those miners to go back to work and operate your mine with miners, or do you want to turn them out now and operate your mine with inexperienced men and floaters?" I says, "The proposition is now up to you."

Well, Mr. Henrie asked me some distant questions that I might not recall all of it, and he did say, "Isn't it the fact that the men down there at the Bisbee Miners' Union were talking among themselves as to whether they was a'going to run this outfit, or whether we were going to run it?"

I said, " I never heard such a thing remarked." I said, "But, I believe you should at least grant us a hearing, unless condemn the men who violated the company rules and we are as keen to have them fired off of the job as you are, and the men who are not guilty of any violation of that kind go back to work."

He said, "We are satisfied with it the way it is. There will be no hearing."

Trial Examiner Kennedy: Who said that, Henrie?

The Witness: Yes, sir.

Q. (By Mr. Persinger) When was the strike finally called off? A. They called it off the 24th of August.

Q. Do you know who actually called it off? A. The members.

Q. And since that time have you personally applied to any official of the company for reinstatement or re-employment? A. Yes, sir.

Q. When was the first time after August 24th that you applied? A. Well, some time in December.

Q. To whom did you apply? A. Mr. Barkdoll.

Q. Where did you see Mr. Barkdoll? A. I run onto Mr. Barkdoll as he was getting in his car, parked down by the P. D. Building—the store building.

Q. That is, in the town of Bisbee? A. Yes, sir.

Q. Was anyone else present in the car with him? A. No one with him; no one with me.

Q. What was said? A. I walked up to the car as he was getting in. I just happened to be passing by there, and I think it was a good time to say something to him, and I says, "Hello, Mr. Barkdoll."

He turned around; he didn't recognize me.

He said ,"Hello."

I says, "Well, are you employing any men now at the mine?"

"Oh, yes," he says, "quite a few."

I said, "How's chances of going to work?"

He said, "Did you ever work for the company before?"

"Oh, yes," I said, "I put in five or six years."

He said, "What's your name?"

I said, "Day is my name."

He said, "Oh, yes, I remember you now." He said, "You was up to the office to see us one day."

I said, "Yes, sir; I am the man."

"Well," he said, "I don't know, Mr. Day. Have you rustled Mr. Bateman?"

I said, "No, not in quite a while."

He said, "I don't know what to say to you about it, but," he says, "have you seen Pat Henrie?"

I says, "Not since the time I saw you and him together."

"Well," he said, "I would like to give you a job. In facts," he says, "I would like to have all of you boys put back to work; but I have no jurisdiction over that." He says, "That is entirely up to Pat Henrie."

Q. Was anything further said? A. Nothing else. I turned and walked away.

Q. Have you applied for work any time since then? A. I did.

Q. When? A. The 8th day of last December.

Q. You mean, December of '37? A. Yes.

Q. To whom did you apply? A. Mr. Belindas.

Q. Where? A. At his office down in front of the Junction shaft.

Q. What time of day was it? A. About 3:15 in the afternoon.

Q. Was anyone present? A. No. We was by ourselves.

Q. What was said? A. I asked him, "How about a job?"

He said, "Nothing doing." He said, "We are not hiring anyone now." He said, "What's your name?"

And I told him.

He said, "Do you live here?"

I says, "Yes." I says, "I live in Bisbee."

"How long have you been here?"

I says, "I have been here since 1929."

"That's funny," he says. "I don't know you, and you have been here that long!"

"Well," he says, "did you ever work for the company before?"

I says, "Yes, I worked quite a few years for the company." I says, "I know that you have got my record and there is no use in going into any delay or anything of that kind. I have worked here and we had a little trouble here in 1935, and I come out on strike."

I says, "Of course, you have that record and I have not been able to get back to work, but," I says, "do you fellows aim to hold that against me?"

"Well," he says, "I don't know whether we do or not."

But he didn't tell me to come back.

Q. Have you been back since? A. No.

Mr. Persinger: Take the witness.

Excuse me, Counsel. Could we take a short recess for about 5 minutes?

Trial Examiner Kennedy: We will take a 5-minute recess.

(Whereupon a short recess was taken.)

Trial Examiner Kennedy: The hearing will be in session.

Cross Examination.

Q. (By Mr. Kitchel) Mr. Day, were you employed by the Mines Division of Phelps-Dodge Corporation on June 10, 1935? A. No, sir.

Q. You stated in your testimony that in April, 1935, you were transferred to the Cole shaft from the Campbell shaft; is that correct? A. Yes, sir.

Q. And you have stated that at that time you received a reduction in rate; is that correct? A. They gave me the slip specifying the reduction.

Q. Isn't it true that that mistake was promptly corrected? A. It was corrected; yes.

Q. Was there anything different in the working conditions at the Cole shaft than they were at the Campbell shaft? A. In the working conditions, did you say?

Q. Yes. A. Yes, there was quite a difference.

Q. In what respect? A. They were really better at the Cole shaft.

Q. Are you at present an officer of Local No. 30? A. Yes, sir.

Q. Have you with you, or can you produce for us, the by-laws and constitution of that organization? A. Not at the present time.

Q. Is there anyone in the courtroom, do you know, that would have that?

Mr. Persinger: They could be produced.

The Witness: I don't have them with me.

Mr. Kitchel: Could we ask that those be produced as soon as possible, Mr. Trial Examiner?

Trial Examiner Kennedy: Well, can you stipulate with counsel for the Board on that?

Mr. Persinger: May we have this off the record?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Persinger: I will be glad to furnish them to counsel this afternoon.

Mr. Kitchel: And could you include in that, Mr. Persinger, the by-laws of the International?

Mr. Persinger: Yes.

Q. (By Mr. Kitchel) Now, with reference, Mr. Day, to your testimony as to making application for employment since June 10, 1935. You testified, I believe, that your first application was made on August 21, 1935; is that correct? A. On or about that date.

Q. Were you at that time in the picket line? A. I was.

Q. Will you tell the Trial Examiner how these groups were arranged, again, outside the Employment Office on that date? A. The groups was arranged, the outsiders who came in, of course, grouped up as they took the stand as close as they could get up to the employment agent's door. We came up and we got right in line with them, a group about the same space as this room here, and when we got up there these boys was all gathered up close, and we followed right in behind them.

Q. How many would you say there were in the first group that were up close? A. Well, I would estimate that 25 to 35 were.

Q. Were all the men in your group who closed in behind them engaged in picketing that day? A. Yes.

Q. What time of day was it? A. Right after 7:00 o'clock in the morning.

Q. Had the shift gone on? A. The shift had done gone.

Q. How long before? A. Possibly 10 or 15 minutes. The whistle had blowed.

Q. Had all the other men coming off shift disappeared at that time? A. No one came off at that hour that I remember of.

Q. You were then actually engaged in active picketing that morning, were you not? A. We was.

Q. Isn't it true, Mr. Day, that you were not applying for employment; you were merely heckling this group that were rustling there and Mr. Bateman? A. We were applying for our jobs back for a reason.

Q. Do you consider that standing in a picket line and yelling at the employment agent was an application for em-

ployment? A. There was no yelling at that particular time that I remember of.

Q. Well, do you consider that standing in the picket line and calling out to the employment agent is an application for employment? A. Yes.

Q. Were you engaged in picketing, or were you engaged in applying for employment? A. In applying for employment, that morning.

Q. Was the strike over? A. No, sir.

Q. Was the picket line through with its duties? A. Yes, sir.

Q. You stated, I believe, that later on that morning Mr. Bateman called in certain men? A. Yes, sir.

Q. To his office? A. Yes, sir.

Q. How long did you remain after that? A. Well, not longer than 30 minutes.

Q. Did you see these men who apparently were given employment come out and start on their way to work? A. No, not at that particular time.

Q. Well, you stated, I believe, that they came out with hard hats and shoes under their arms? A. That would be in the afternoon.

Q. Had you been there all day? A. No, we were not there all day. We went back during the time that the shift was going on and coming off in the afternoon.

Q. During the course of the time when the picket lines were established, Mr. Day, is it not true that every morning when the shift had gone on, and the picketing was more or less disbanded, that the picket line swung in behind the rustlers in order to stop men from applying for employment? A. That did happen a few times, but not regularly.

Q. That happened on the morning of August 21st, did it not? A. Not for that purpose, that morning.

Q. Were there any remarks made by the men in your group who were pickets, to the group up in front of you who were apparently rustling a job? A. I don't believe that there was any conversations went on, none that I know of

that morning, or hardly any of the mornings thereafter. They were trying to keep the boys from rustling work.

Q. Nothing was said by the members of your group in the picket line, then, to any of these men who were applying for employment? A. None that I know of at all that morning.

Q. Were there any remarks made by your group to the men who were actually selected by the employment agent and who went in? A. I didn't hear of any.

Q. There was complete quiet there? A. It was quiet.

Q. Was this the only morning during the course of picketing that you fellows spoke up to Mr. Bateman and asked him about a job? A. That is the only morning that we rustled in a group.

Q. Did you rustle as individuals—did you individually rustle? A. Yes, sir.

Q. State exactly what you did on those occasions; now, this is prior to August 23rd, when you said you had a meeting up at the general office. A. I didn't get that question.

Q. Well, you say that you did not rustle as a group on any occasions. Will you state what you did individually in the way of making application for employment during that time. A. What I mean by the group was the bunch of miners that was there that was instructed to go back and try to get their jobs back; that we had lost the strike and that we had been promised, through our representatives, that all but a few would be put back to work. Therefore, we goes up there all together to ask for the jobs, to see who the few was that they wouldn't hire.

Q. What day was that? A. That was on this morning, on or about the 21st or 22nd.

Q. The strike was lost, and you had been advised that by your representative, but you were still picketing? A. Yes.

Q. And you swung right from the picket line right up to the employment office? A. Yes, sir; we was merely holding our pickets together until we had a chance for a conference

with Pat Henrie; then bunched the men together and called it off. That had done been decided.

Q. Now, getting back to my question. You stated that that was the only time you made application, as you call it, as a group, but that individually you applied for employment during that period. Did you state what you actually did in that connection? A. I stated just what I did there, yes.

Q. I don't mean on this morning when you were all there as a group. You stated at other times individuals of that group had made application to Mr. Bateman. A. No, not to Mr. Bateman.

Q. To whom? A. To Pat Henrie, Barkdoll and Mr. Belindas.

Q. Well, that meeting, as I recall your testimony, with Mr. Barkdoll and Mr. Henrie was on August 23rd? A. Yes, sir.

Q. I am trying to get at what happened prior to that meeting down at the employment office. Did you ever make application to Mr. Bateman yourself, individually? A. No, not after I was canned.

Q. So that the only thing you ever did from June 10th to August 23rd, which is the date of your meeting with Henrie and Barkdoll, was on the morning of August 21st, where you were standing with a group of 25 and calling out to Mr. Bateman? A. Yes, sir. That was the way rustling was done at that time by everybody.

Q. Is it customary, to your knowledge, to stand out there and yell up at the employment agent, "How about giving me a job?" A. Certainly so, if there is a large group there, and that's the way you had to rustle.

Q. Well, if the Trial Examiner went down in the morning when there was rustling, would he hear people calling from all over the group to Mr. Bateman? A. Well, it wasn't always calling, but they would hold their hands up. (Illustrating.)

Q. When requested by him? A. No, when he asked for miners.

Q. Is it not customary for men to go in and have an interview with Mr. Bateman? A. It was not at that time.

Q. Did he ever state, whenever you were in the rustling line, that he would be glad to see men at a certain specified time? A. He never did make the remark of that kind, but one time, right after the beginning of the strike, he come out on the same platform and he says, "If you men don't go back to work by a certain date, you will not work for the Phelps Dodge again."

Q. Do you recall what date that was that he made that statement? A. No, I don't; but I would say it was within 15 days after the strike was called.

Q. Where were you on the date that that statement was made? A. I was on front of his office.

Q. Were you picketing? A. Yes.

Q. How many pickets were there with you at the time? A. Well, at the particular time it is kind of hard to estimate, but they was possibly a hundred pickets.

Q. Were there people rustling at that time? A. A few kids.

Q. Was the picket line that you established stationed directly in front of the employment office? A. Well, it extended sometimes as far as 150 feet away, up beyond the employment office and down below the employment office.

Q. So that a number of the persons in the picket line were directly in front of the employment office? A. Most all the time, yes.

Q. It was not difficult, then, to picket and apply for employment at the same moment? A. Yes. But he never hired until after the shift had gone down and the pickets would disperse.

Q. You stated, Mr. Day, that in December, you believed it was, you spoke to Mr. Barkdoll. What year was that? A. '35.

Q. Would you state whether or not Mr. Barkdoll is now living? A. I have been informed he is dead.

Q. That was in December, 1935, and I believe you stated that Mr. Barkdoll said that he had no jurisdiction, that you would have to see Mr. Henrie, did he not? A. He did.

Q. Did you ever go to see Mr. Henrie after that conversation with Mr. Barkdoll? A. No, sir.

Q. You testified, I believe, that on December 8, 1937, you made application to Mr. Belindas for employment? A. Yes, sir.

Q. Did you know that the company was not hiring any men at that time? A. No, I didn't know they was not hiring. Since that time I have been informed they have put several back.

Q. Have you been in the district ever since last Summer? A. Yes, sir.

Q. And you did not know that the company was not hiring any more men this Fall? A. No, I didn't know it. It is customary with the Queen to possibly lay off a bunch one week and hire the next.

Q. Well, are you at all familiar with the conditions of the copper market or things that affect this community? A. Not a great deal. I notice the paper daily on that, of course.

Q. Was it not brought to your attention in the community that the company was laying off men during this period? A. Oh, yes. I knew they was laying off.

Q. Were you employed at the time that you made application to Mr. Belindas? A. I was; yes, sir.

Q. Where were you employed? A. At the Denn.

Q. That is, the Shattuck Denn Mining Company? A. The Shattuck Denn.

Q. Were you prompted by anybody to go on December 8th and make application for employment? A. No, sir.

Q. Did it have anything to do with this hearing? A. No, sir.

Q. Did you receive instructions from Dr. Nylander that you should do that? A. No, sir.

Q. You say you are now employed at the Shattuck Denn? A. Yes, sir.

Q. When did you first go to work for the Shattuck Denn? A. August 14th, in '36.

Q. Have you worked continuously since then for that company? A. I have been employed continuously, but we don't get regular work.

Q. Well, what do you mean by that? A. Well, I am now scheduled for four days a week. In other words, I only got 17 shifts in on this month.

Q. What is your job at the Shattuck Denn Mine? A. Electrician helper.

Q. Has that been your job ever since you went to work for them? A. Yes, sir.

Q. Between the period of August 24th and the date at which you went to work for the Shattuck Denn Mining Company, did you have any other employment? A. On relief.

Q. For that entire period? A. Yes, sir; a part of the time; sometimes I wasn't on relief.

Q. Did you make any effort to get employment? A. Sure.

Q. What efforts? A. I made an effort to get back on with the Phelps Dodge.

Q. Did you try to get work anywhere else? A. No.

Q. When did you start doing relief work? A. I don't know whether I did any relief work in June, '35, or not; but somewhere around the 1st of July, I believe.

Q. 1935? A. Yes, sir.

Q. How many days a week did you work on relief? A. Well, from about 8 to 11 days a month, I believe, I was always allowed.

Q. Was that true all the time up until the time you went to work with the Shattuck Denn? A. Yes, sir.

Q. That would be the approximate time you worked? A. Yes, sir.

Q. You stated, I believe, that you were in the picket line continuously from June 10, 1935, until August 24, 1935? A. Yes, sir.

Q. During the course of the time in which the picket lines were established, were you involved in any fights in the district? A. No, sir.

Q. Were you ever charged with any offenses? A. Yes. I had one charge against me for that.

Q. What was the charge? A. The charge was for striking some fellow with my fist.

Q. Do you remember who it was? A. I believe the fellow's name was Higgins.

Q. Was he employed by the company? A. I don't know whether he was employed or not.

Q. Were you convicted of that charge? A. No, sir.

Q. Did you ever serve any time in jail? A. Yes, sir.

Q. How many days? A. 12 days.

Q. But you were not convicted of the charge? A. Never was brought to trial.

Q. Do you remember a man by the name of Larry Kuder? A. Yes, sir.

Q. Do you recall that he was in a fight with some other men? A. It was reported he was; yes, sir.

Q. You deny that he was? A. I don't know whether he was or wasn't.

Q. Were you at any time held for investigation in connection with that case? A. No, sir.

Q. You would say that you can't recall whether or not Giles Higgins was an employee of the company? A. No, I don't know who they employed.

Q. Did you have a fight with Giles Higgins? A. No, sir.

Q. Did you strike Giles Higgins? A. No, sir.

Q. You are testifying truthfully now? A. Yes, sir.

Q. It is not true that Giles Higgins was an employee of the company and that, as a result of the strike, you beat up on him? A. No, sir.

Mr. Kitchel: Mr. Trial Examiner, if possible, I would like to continue with the cross-examination of Mr. Day when we start our next session, and when we have available the by laws for which we have asked.

Trial Examiner Kennedy: How much longer do you estimate it will take to finish the cross-examination?

Mr. Kitchel: Well, I should estimate not more than an hour longer.

Trial Examiner Kennedy: It is now 12:10. Do you gentlemen wish to continue this afternoon, or is there any reason why we should not continue this afternoon?

Mr. Kitchel: I believe that Mr. Persinger and I have already discussed that, and counsel for the respondent would like to have the afternoon for other commitments that we have made, in view of the arrangement we made a few days ago.

Mr. Persinger: That is satisfactory.

Trial Examiner Kennedy: Very well.

Mr. Witness, you are still a witness in this case during this recess, and you will not discuss the case with counsel for the Board unless counsel for the respondent is present, until you resume the stand.

The hearing will be in recess until 9:00 o'clock Monday morning.

(Whereupon, at 12:10 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., January 31, 1938.)

Proceedings.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Room 2 Cochise County Court House
Bisbee, Arizona
Monday, January 31, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondents.

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in session.

Will the witness take the stand, please.

Mr. Kitchel: Mr. Trial Examiner, before we proceed, it was called to my attention that after the Examiner's ruling yesterday excluding all witnesses from the courtroom, that that ruling was technically observed, but the door was open and all the Board's witnesses were standing in the doorway. Could we have that corrected?

Trial Examiner Kennedy: Could we have what corrected?

Mr. Kitchel: That they are practically in the courtroom, with the door open, and there is no purpose in the ruling if they are going to stand in the doorway.

Trial Examiner Kennedy: The understanding is that they are not to be within earshot of the witness on the stand.

Mr. Persinger: I shall be glad to correct that today.

Trial Examiner Kennedy: I think the door ought to be closed; I think we ought to have this door (indicating) closed, too. If anyone wants to hear the proceedings, let him come into the room. Let us keep that door closed, too.

W. M. DAY, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued).

Mr. Kitchel: Are you ready to proceed, Mr. Examiner?

Trial Examiner Kennedy: Proceed.

Q. (By Mr. Kitchel) Mr. Day, I believe you testified on Saturday that you first went to work with the Shattuck Denn Mining Company on August 14, 1936. Is that correct? A. Yes, sir.

Q. You also testified, in answer to my question, that at the present time you are not getting full-time work there; is that correct? A. No, sir; I didn't state that.

Q. Well, I may have misinterpreted you. I believe you said something to the effect of staggered employment. A. I was not getting full-time work in December of '37.

Q. December of '37? A. Yes, sir.

Q. What is the condition at the present time with respect to your employment at Shattuck Denn? A. I get four days a week, or approximately four days a week.

Q. Isn't it true, Mr. Day, that from August 14, 1936, until the latter half of December, 1937, your employment at the Shattuck Denn Mining Company was regular and continuous? A. Yes.

Q. Isn't it true that during that period of time you were employed at 8-hour shifts five days a week? A. Yes, in most cases I got more than five days a week, since that period of time.

Q. You testified, did you not, Mr. Day, that you were at present an officer of the Bisbee Miners' Union, Local No. 30, is that correct? A. That is correct.

Q. And that during the period of time between the 1st of June, 1935, up to the present, you have been quite active in that organization, is that correct? A. Yes, sir.

Q. During the year 1935, when were the regular meetings—what day of the week were the regular meetings of the union held? A. Up until June, '35?

Q. During the year 1935. A. We held a meeting, I believe—it was practically every Saturday.

Q. Saturday nights? A. Yes.

Q. You testified on Saturday, I believe, that you were discharged on June 6, 1935, is that correct? A. Yes, sir.

Q. What day of the week was that? A. That was on Thursday.

Q. You then testified, I believe, that on June 7th, which would then be Friday, a mass meeting was held of the members of Bisbee Miners' Union, Local No. 30, is that correct? A. Yes, sir.

Q. What notice was given of that meeting to the membership? A. Well, I don't know what notice was given. I

know there was lots of personal notices, but I was not active in the organization at that time. I held no leadership, so I don't know.

Q. Was Mr. Morrison the President at that time? A. How is that?

Q. Was Mr. Morrison the President at that time? A. Yes.

Mr. Persinger: May I interrupt counsel off the record for a moment, Mr. Examiner?

Trial Examiner Kennedy: Yes, you may.

(Discussion outside the record.)

Mr. Kitchel: Mr. Examiner, in connection with this questioning, counsel for the Board has agreed to stipulate that three days' notice of this meeting of June 7, 1935, was not given to the membership of the union.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: Very well.

Mr. Kitchel: And that is in accordance with the requirements of the by-laws?

Mr. Persinger: I understand the by-laws require three days' notice.

Q. (By Mr. Kitchel) Mr. Day, how many members of Local No. 30 were present at that meeting on the night of June 7, 1935? A. I cannot say how many was present, but there was quite a crowd.

Q. Could you give us an estimate of the number? A. I believe I would be safe in saying there was from 150 to 200.

Q. Was that the entire membership of the organization? A. I don't know that.

Q. And that turn-out was gotten by personal contact previous to the meeting? A. I don't know that there was any notices given.

Q. You stated, I believe, that at that time there was a vote taken in which the membership voted that a strike should be called, is that correct? A. Yes, sir.

Q. And you stated, I believe, that the vote was practically unanimous? A. I did.

Q. In other words, then, your testimony is that between 100 and 150 men voted for the strike? A. I would estimate around that number.

Q. Who, at the present time, has the custody of the records of Miners' Union, Local No. 30? A. Mr. Foley has the records of what we have. There were some of the records misplaced.

Q. Do you know whether or not Mr. Foley has in his possession the minutes of the meeting held on June 7, 1935? A. I don't know whether he has them or not, but I believe he told me the other day that he didn't have them.

Q. Do you know of your own knowledge what has become of those records? A. I do not. There was quite a number of keys for the hall, and different organizations were meeting in there, and we had our records in a desk, and we find a part of them burned up, and we don't know who burned them.

Q. Who was the secretary of the organization in June, 1935? A. Mr. A. B. Potter—I believe he was the secretary.

Q. Who was the treasurer? A. P. C. Lytle was treasurer up until the meeting before the strike was called, and I were elected treasurer, but never installed. The strike come on during the next week, and everything got into such a turnover there that I never taken office.

Q. Approximately how long did that meeting on the evening of Friday, June 7, 1935, last, Mr. Day? A. I believe it lasted two or two-and-a-half hours.

Q. Was that period of time, which you estimate to be two or two-and-a-half hours, the only period of time within which the membership was given an opportunity to vote on this strike proposition? A. There was no time set. When the business was finished they disbanded.

Q. And there was no time during that day prior to the time the meeting was called that voting on the proposition was allowed?

Mr. Persinger: Again, if I may interrupt counsel—Off the record, Mr. Examiner?

Trial Examiner Kennedy: Off the record.

(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Kitchel: Counsel, Mr. Trial Examiner, have agreed to stipulate that the poles for a strike vote were not open for the required hours as provided in the bylaws for a strike vote.

Mr. Persinger: So stipulated.

Q. (By Mr. Kitchel) Mr. Day, when the strike was called on June 10, do you know whether or not the entire membership of Local No. 30 walked out on that date? A. No, the entire membership didn't.

Q. It is true, then that a substantial number of your membership stayed at work? A. Some did go ahead and continue to work.

Q. Approximately what percentage of your membership? A. Well, it was a very small percentage; I don't know just what figures to put that at.

Q. You have testified that you were discharged by the company on June 6, 1935, and you have also testified that several other men were discharged on the same date, is that correct? A. Yes, sir.

Q. Did you, or any member of your organization, take up with the management of the company the question of those discharged cases at any time prior to June 10, 1935? A. I did not, but our Executive Board did.

Q. Can you testify of your own knowledge that your Executive Board called upon the management with respect to those discharges? A. Nothing more than the reports that they brought back to the union. I believe we might have the records on that.

Q. Could you produce such a record? A. I cannot, but I am pretty sure Mr. Foley can.

Mr. Kitchel: Off the record.
Trial Examiner Kennedy: Off the record.
(Remarks outside the record.)
Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Who was on this Executive Board that you mention that reported that they had taken this up with the management? A. Mr. Lee White and Henry Hanson, Victor Smith and John Reeves.

Q. Where is Mr. White at the present time, if you know? A. He is in Park City, Utah.

Q. Was he in the district at the time the strike was called? A. He was not.

Q. Was he then on this Executive Board that you stated called on the management? A. He was on the Executive Board the last meeting, but it was not in regards to the 8 that was discharged. It was others before that.

Q. Where is Mr. Victor Smith at the present time, if you know? A. Mr. Smith is this side of Phoenix—I can't recall the name of the town.

Mr. Persinger: Mesa.
The Witness: Mesa.

Q. (By Mr. Kitchel) Is it the town of Mesa, Arizona? A. Mesa, Arizona.

Q. Where is John Reeves? A. He lives at Apache, Arizona.

Q. Where is Mr. Henry Hanson at the present time, if you know? A. I believe Mr. Hanson is in Kellogg, Idaho.

Q. Let me ask you this, Mr. Day, in order that I may understand you correctly: When you say that you believe the Executive Board to which you have referred discussed discharge cases with the management, are you speaking of the period between June 6, 1935, and June 10, 1935? A. No, not that period.

Q. You will recall, then, whether or not at any time between June 6, 1935, and June 10, 1935, you or any member

of the union discussed with the management the matter of your discharge and the others that you have mentioned on the 6th day of June? A. No, there was no meeting on that.

Q. Was any notice given to the company of your decision to strike? A. I can't answer that question.

Q. Do you know whether any notice was given? A. No, I don't.

Q. Is it not true, Mr. Day, that with reference to your discharge and those others to whom you have referred on June 6, 1935, there was no discussion of those cases between representatives of the union and representatives of the management between the dates of June 6, 1935, and August 23, 1935, which is the date of a meeting to which you referred in your testimony Saturday? A. Yes, we sent a committee of disinterested parties up there to discuss the matter between that time.

Q. Were they discussing the matter of the strike, or the matter of your discharge and the other men that were with you? A. The whole thing was supposed to be discussed and brought up.

Q. Were you present at any of those meetings? A. No.

Q. You do not know of your own knowledge, then, what transpired at those meetings? A. Nothing more than the report of the committee.

Q. You know the approximate date of that meeting? A. I believe it was on or about the 16th of August, 1935.

Q. Is it not true, Mr. Day, that since August 23, 1935, the union has not requested, nor has there been held, any meeting between the union and representatives of the management for the purpose of discussing the re-employment of the men who walked out on June 10, 1935, or for the purpose of collective bargaining on behalf of any employees of the company, or for any other purpose?

Now, if that question is not clear, the Reporter can read it back to you.

A. Between the dates—I don't recall the date.

Q. Since August 23, 1935, to date. A. No, we have never met since that time.

Q. Was your answer to my question "No"? A. No, that is correct; of a committee, you say, didn't you?

Q. I said any representatives of the union. A. Any representatives, no.

Q. Are you familiar, Mr. Day, with the filing of the original charges in this case? A. No, I am not familiar with it.

Q. Do you know that there was an original charge filed in May of 1937? A. I did not have to file any charges with the exceptions of sending in some applications.

Q. Applications of what nature, Mr. Day? A. Of discrimination by the Phelps Dodge Company against the men.

Q. Did you send those to the Regional Director? A. Some, I did take an—I don't know that I sent them, but I turned them over to the Secretary.

Q. Were they in the form of affidavits? A. Pretty much.

Q. Were you an officer of Bisbee Miners' Union, Local No. 30 in May, 1937? A. I don't believe I was, in May; I might have been.

Q. Were you in regular attendance of the meetings of the union? A. Yes.

Q. Did you know, in May, 1937, that the charge was filed, signed by John P. Foley, covering the cases of H. J. Montgomery, John Bowden, P. C. Lytle, William Dougherty, Merrell Johnson and James McKelvey? A. I knew they was filed with the Board, but I don't know what time; sometime last spring or summer.

Q. Was there ever, to your knowledge, Mr. Day, during the years 1936 and 1937, any meeting between representatives of the union and representatives of the management, with respect to the cases of the men whom I have just mentioned? A. No, we had no meetings with them.

Q. You are familiar, Mr. Day, are you not, with the list of 48 men, attached to this complaint, which includes yours? A. Yes, sir.

Q. Were there any meetings going on between May 25, 1937, and December 7, 1937, between representatives of the union and the management, concerning the employment of any or all of the men in that list? A. There was none.

Q. Mr. Day, to your knowledge, has the company ever refused to meet with representatives of your union for any purpose? A. I don't believe they ever refused to meet, but we never got nowheres with them.

Q. But they were always willing to meet at your request, is that correct? A. They always told them to come in at any time, but we never gained a point.

Q. Is it not true, Mr. Day, that the company has never refused to recognize the union as the representatives of such employees of the company as are members of the union in negotiating, fixing, maintaining, changing and seeking to arrange terms or conditions of employment with respect to those men? A. Our committee would report back to us that they were willing to meet at all times, but they never could gain anything in their bargaining.

Q. But my last question was, whether or not they had ever refused to meet for that purpose? A. They never did refuse to meet.

Mr. Persinger: Mr. Examiner, may I remind counsel that there is no charge of refusal to bargain in this case?

Mr. Kitchel: That is not the point of this line of questioning, Mr. Persinger.

Q. (By Mr. Kitchel) Mr. Day, going back for a minute, you have testified as to a meeting of the membership of the union on the evening of Friday, June 7, 1935, at which a strike vote was taken.

Will you tell the Examiner whether or not there was any other meeting at which a strike vote was taken in connection with this walkout? A. They were a meeting, I believe it was April of '35, on a strike vote.

Q. What was the result of that meeting? A. We lost the strike vote by one-third of one vote.

Q. Was there any meeting subsequent to the meeting of June 7, 1935, at which a strike vote of the membership was taken? A. Before or after?

Q. After June 7, 1935? A. After the 7th?

Q. After June 7th, 1935? A. There was no strike vote taken after that.

Mr. Kitchel: That is all.

Redirect examination.

Q. (By Mr. Persinger) Mr. Day, concerning this first strike vote you mentioned as having been taken in April, did any supervisors of the company ever speak to you about that; that is, any bosses, shift bosses, foremen? A. Yes, oh, yes.

Q. Who did? A. Mr. Marshall.

Q. Who was Mr. Marshall? A. Mr. Chris Marshall was mine foreman.

Q. And anyone else? A. Yes; Tom Morts.

Q. Was that all? A. Well——

Mr. Kitchel: Mr. Examiner, I would like to object to these questions. I do not see what was said about the strike vote prior to June has any bearing on this particular question.

Mr. Persinger: If the Examiner please, counsel opened up this question of the strike vote. I had omitted it completely. I think, since it has been opened, and since it was stated that the strike vote failed, I have the right to show some indication of why it failed at that time.

Mr. Kitchel: I do not think Mr. Day's answer was in response to my question on that.

Mr. Persinger: There was no motion to strike as a result of that.

Trial Examiner Kennedy: It seems to me that the cross-examination on that point is immaterial, and I do not intend to regard it unless it is connected up. I will sustain the objection. I do not see any point in going into that.

Q. (By Mr. Persinger) Referring to your previous testimony, Mr. Day, you mentioned at one time, if you remember, that you asked Mr. Bateman. Did he say something to Mr. I. V. Pruitt. Who is Mr. I. V. Pruitt? A. He is the Sheriff of Cochise County.

Q. And at another point in the transcript there appears the name A. B. Porter; P o r t e r? A. Potter.

Q. That should be "Potter"? A. Yes.

Q. And at another point there appears the name A. W. Potter. Should that be A. B. Potter? A. Yes, sir.

Mr. Persinger: That, again, was in your testimony. I have no further questions.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: You may be excused. Will counsel stipulate that this witness will not be recalled?

Mr. Persinger: I have no purpose, so far as I know, in further recalling this witness.

Mr. Kitchel: I have none in mind now, Mr. Examiner.

Trial Examiner Kennedy: Very well; you are permanently excused.

Mr. Persinger: You may remain in the hearing room, if you wish.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Persinger: Will you take the stand, Mr. Bateman?

M. A. Bateman—For National Labor Relations Board—Direct.

M. A. BATEMAN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your name, please?

The Witness: M. A. Bateman.

Direct examination.

Q. (By Mr. Persinger) Mr. Bateman, are you employed by the Phelps Dodge Corporation? A. I am.

Q. How long have you been employed by them? A. Approximately 27 years.

Q. What position did you hold with the corporation in 1935? A. I was employment agent.

Q. How long did you continue to be employment agent? A. To about August 1st, 1937.

Q. And you were employment agent for the Mines Division of the Copper Queen Branch? A. Yes, sir.

Q. Mr. Bateman, I will show you a number of papers stapled together, which I at this time will offer for identification as Board's Exhibit No. 9, and I will ask you if that is a list compiled by you? A. It is, sir.

(Thereupon the document above referred to was marked as Board's Exhibit No. 9 for identification.)

Q. (By Mr. Persinger) That was compiled in answer to the subpoena? A. It was compiled under my supervision.

Q. Who actually did the work on that? A. I think—no, I made this list. I made this June.

Q. You made that personally? A. Yes, sir.

Mr. Kitchel: Mr. Persinger, what is that list?

Mr. Persinger: This is the list of employees on the payroll of the company for June, 1935.

M. A. Bateman—For National Labor Relations Board—Direct.

Q. Now, first, can you tell me what the numbers preceding the names indicate? A. That's the employee's payroll number.

Q. As I understand it, Mr. Henrie's testimony, each department or shaft has a group of numbers which indicates the man is employed in that department, is that correct? A. Yes, sir.

Q. Can you tell me which department these different groups of members refer to? For example, the 200's first? A. Well, from 200 to the 500's, I think—from 200's to the 515's are assigned to Division A.

Q. What is that division? A. That is the Junction shaft.

Q. I see. What is the next group of numbers? A. The next group of numbers is from 901 to 1208?

Q. And that group applies to which division? A. Division B.

Q. And what is included in that division? A. The Campbell Division.

Q. And what is the next group? A. The Cole Division, Division C, which runs from 1501 to 1618.

Q. And what is the next group of numbers? A. The next group covers the surface roustabout gang, composed of Mexicans, and it runs from 4,001 to 4,050.

Q. And the group after that? A. Is the mechanical department, which runs from—I mean mechanical and construction department—which runs from 5101 to 5850.

Q. And the group following that? A. The next group is the regular watchman's group, running from 5901 to 5926.

Q. And the next group? A. Is the miscellaneous surface departments which includes the warehouse, assay office, gardners, janitors, and so forth. It extends from 6001 to 6110—I will correct that—to 6048.

The Diamond drill crew runs from 6103 to 6110. And during that month there was some special watchmen on, and their numbers extended from 6202 to 6235.

M. A. Bateman—For National Labor Relations Board—Direct.

The balance are salaried employees and do not have specific payrolls.

Q. Now, there are certain marks on this list that I wish you would explain. For example, following one name is the symbol "5 D.B." What does that mean? A. That means that the employee was working on a five-day basis and was off that day in order to make up time for some prior day worked. He would probably work the following Saturday or Sunday when the mine was normally closed.

Q. And what does the——

Trial Examiner Kennedy: Just a minute. Will you please close that door.

Q. (By Mr. Persinger) What does the figure "1" indicate? A. The "1" indicates that he worked on this day, June 7th, or under the head "Date heading."

Q. That he worked the day which is indicated in the heading? A. Yes.

Q. Could he have worked some other day in the week and still have a number under that heading? A. No.

Q. And what does the symbol "O" indicate? A. That he was off that day, and for some reason—could offer no excuse. We didn't know why he was off.

Q. And "S" appears occasionally. What does that indicate? A. That indicates he was off due to sickness.

Q. And occasionally "A" appears. What does that indicate? A. Off due to accident.

Q. And "F" appears. What does that indicate? A. Off on furlough.

Q. And occasionally there appears a small "f". What does that indicate? A. It indicates he was off due to an accident off duty.

Q. And a capital "V"? A. Vacation.

Q. And then following certain names appears occasionally "E. B. A.—Settlement." What does the "E. B. A." mean? A. "Employees' Benefit Association Settlement."

Q. That is for a settlement for an accident? A. Well, either sickness or accident.

Q. Mr. Bateman, I will show you an employees service record. I believe that is the name of this? A. Yes.

Q. This is the record of one William Day, and I will ask you to explain certain things on it. Now, in 1935, did you have anything to do with making up these records? A. I did, sir.

Q. What authority did you exercise over the composition of these records? A. Well, full authority, you might say.

Q. Were they made up in your office? A. Yes, sir.

Q. And under your supervision? A. Yes, sir.

Q. Now, what is the actual procedure in making up a record? For example, the first line in this record reads: "11-1-31, Trans.", which, I suppose, means "transferred"? A. Yes, sir.

Q. Occupation: "Mucker, No. 915, Boss: Fisher. Remarks: From C&A pay roll." Now, would you know in advance, that Mr. Day, on November 1, 1931 was going to be transferred, or would you have any notice of that in advance? A. Yes, in some instances we would have notice, and in others we probably would not have.

Q. What is more customary, or is there any settled custom? A. Well, that depends on the transaction. Now, for instance, in that time we were probably notified following.

Q. And how would you be notified, either in advance or following? A. As I say, it depends on the transaction involved. You see, now, on a blanket transfer, as we call them, like that, where we are taking over a division, the men were often selected, in most instances were selected by the foremen and bosses, and assigned to their new departments. Of course, where individual transfers occurred, sometimes we did have advance notice.

Q. Now, what are the mechanics of notifying your department; that is, the foreman makes the transfer, I under-

stand; is that correct? A. Well, for a single transfer. For instance, in the case of a man requesting a transfer from one division to another, for any reason, why, he would ask his foreman for a transfer slip, which he would bring to my office and I would then arrange his transfer for the other department through the other foreman.

Q. Well, are any transfers ever arranged without your knowledge until it actually happens? A. Well, I should say it depends on this: Sometimes they run along and average more than 50 per cent.

Q. Now, supposing the transfers are made by the foreman. Now are you then notfied that there has been a transfer? A. They send in the transfer slips.

Q. The foreman sends them in? A. Yes.

Q. Now, the next line on this record of Mr. Day indicates that on April 29, 1935, he was again transferred to the occupation of motor swamper. Would that be in the Cole Division? A. Yes, 1531 would be the Cole Division.

Q. Under Mr. Ratteree. Would Mr. Ratteree inform you that that transfer had been made? A. No, Mr. Fisher would —Mr. Fisher was his prior boss, but generally he would notify me. He would send in the slip. He was leaving his department, you see, and he would therefore send the slip in to me.

Q. And then when you received the slip you would have a notation made on this card? A. Yes.

Q. Which is kept in your records? A. Yes.

Q. Now, what other records could you keep of such a transfer as that? A. Just a report record, daily report record wherein we list all transfers and changes on the payroll.

Q. There is no other record that you keep confined exclusively to William Day other than this card? A. No, that is the only record, that is the basis of all the records and all the reports.

M. A. Bateman—For National Labor Relations Board—Direct.

Q. Now, referring down to the lower half of this record, which is marked off more or less as a graph. In the year 1932, following the month "January" appear the figures 6-8. Now, what does that indicate? A. We keep our—we run our payroll rather in two periods, and we pay twice a month, and at that time we were on a short-week, and that indicates—the 6 indicates that Mr. Day worked 6 days in the first period, or during the first 15 days; and 8 in the last part of the month.

Q. Well, now, on—— A. (Interrupting) You see, that was the basis of operation all the way through there.

Q. Now, in the year 1935, following the month of January appears a blank. Now, does that mean that he worked no days, or worked all days? A. No, it means we ceased posting at that time.

Q. Oh, you don't use that any more? A. No, we have taken it up again, but we stopped it at that time.

Q. Well, the "f" which appears in the blank space would indicate he was off on furlough? A. Yes.

Q. Now, on the other side of the card following the wording "Accident Record," can you tell me what "4-1-32, A, C, cert." means? A. It means that Mr. Day had completed a course of first aid training and was awarded a certificate at that time, company certificate, for having completed the course.

Q. And am I correct in assuming that under "Honor Roll Record" the figures "4-1-35" followed by "Sixth Year" means that he had worked 6 years without an off-time accident? A. Well, it means he might have worked longer. But we started our safety program and following that he worked that term.

Q. I see. Referring again to the first face of this card, there appears on the third line the figures "6/10/35," and following that "Quit," and "Occupation, Motor Swamper," "1535, Boss, Battery," and then a notation "Walked out

when strike was called and picketed all during strike." Who determined that he picketed all during the strike? A. I probably made that notation.

Q. In other words, you recognized him on the picket line at various times? A. Uh-hul.; uh-huh.

Q. Now, following that is an entry "6/6/35; Discharged; Motor Swamper; 1535; Pomeroy," and "Remarks, creating trouble on the job and the change room." Doesn't that seem to conflict with the previous item? A. Well, it does, but it is explainable to this extent: A day or so after the strike we dropped all men who were on the picket lines to clean up the payroll. Later this discharge slip came through from the foreman. You see, they were on a 5-day basis. They wouldn't have been working the 7th, 8th and 9th, and the mail service was slow at that time. We had about one mail service a day, so I probably wouldn't get that until the 10th or the 11th after this entry would have been made.

Q. In other words—— A. So then this was posted—this is a notation.

Q. It would take you probably 5 days to get the notice that he had been discharged? A. Yes, in some instances.

Q. What is the connection between Mr. Pomeroy and Mr. Ratteree, both of whom are listed as bosses? A. Well, in making an assignment, the foreman then assigns the employee to a shift boss. We do not do that at the employment office. We simply assign him to the division and to the foreman.

Q. Who is the foreman in this instance? A. Mr. Ratteree.

Q. Who is Mr. Pomerly? A. He was the shift boss.

Q. I see. Had you received any previous notice of that discharge for creating trouble on the job and in the change room? A. No.

The first notice you got was the actual slip that came through to you? A. Yes.

Mr. Persinger: I will offer this as Board's Exhibit No. 10.

Trial Examiner Kennedy: I believe there was Board's Exhibit 9 for Identification. Do you want to dispose of that?

Mr. Persinger: No, not yet.

Trial Examiner Kennedy: Very well. It is offered in evidence as Board's Exhibit No. 10. Is there any objection?

Mr. Kitchel: I would like to know what the purpose of the offer is, whether to show the form of the card, or the service record of Mr. Day.

Mr. Persinger: It is to show the service record kept by the company for Mr. Day. The form of card has already been shown by Tom Abedin's card, which is in evidence as Board's Exhibit No. 8.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Received in evidence as Board's Exhibit No. 10.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 10.)

Q. (By Mr. Persinger) Mr. Bateman, do you know how long Mr. Ratteree was foreman at the Cole shaft? A. I think from—We started operations over there, I believe, on March 1, 1934. I think at that time he was appointed foreman. It was either the 1st of March or the 1st of April. I know it was in the spring.

Q. How long did he continue to act as foreman? A. I really couldn't tell you.

Q. Can you tell me approximately whether it was a matter of months, or for a year or more? A. Oh, I think it was at least 18 months.

Q. I will show you a list made up in answer to a subpoena, of transfer to and from Cole, and you will see that

it indicates that on April 26, 1934, Mr. U. S. Ratteree was transferred to salary, and the general heading is: "Out of the Cole." Did he continue as foreman after that? A. Yes. that means that he was transferred from a day's pay to a salary.

Q. Oh, that is all it is? A. He remained in the same position.

Q. I see. Thank you. Were you consulted concerning any of the transfers from various divisions to the Cole shaft during the 12 months or so after it opened? A. I couldn't say; I don't believe so.

Q. Normally, who would determine those transfers? A. The general foreman.

Q. Mr. Fisher? A. I think Mr. Fisher was general foreman then.

Q. What would be the mechanics of that, if you know? A. Well the way it was worked then, and still worked, I presume, is for the foreman—the foreman of one division who requires men, especially when they are building up a division, to request the general foreman for men. Now, if he wants 10 men, he may assign 5 from Division A, 5 from Division B.

Q. That is, in this case, Mr. Ratteree would request Mr. Fisher to furnish him a certain number of men to fill certain jobs? A. Yes.

Q. Mr. Fisher would then go to the foreman at other divisions and say, "Let me have so many men out of your division"? A. Yes, sir.

And, so far as you know, was that the way the transfers actually were determined, to the Cole shaft? A. Well, that would be the majority, I would say.

Q. The majority? A. Yes.

Q. So far as you know, there was no general policy connected with those transfers? A. Not to my knowledge.

Q. In 1935, from June 10th on, who determined whether or not the individuals who had gone out on strike and ap-

peared on the picket line would or would not be reinstated? Who decided that question? A. I couldn't tell you. It is above my head.

Q. In other words, you received orders on it? A. No.

Q. You did not receive orders? A. Not to reinstate anybody, no.

Q. Well, did you receive orders not to reinstate them? A. No.

Q. You received no orders concerning it at all? A. Yes, I did.

Q. What orders did you receive? A. Well, shortly after the strike, probably a week or so, I was instructed by my supervisors to "go slow" on it until they saw what happened.

Q. "Go slow" on what? A. Reinstating any of them.

Q. I see. Who were your supervisors? A. Mr. Hodgson and Mr. Henrie.

Q. Were those instructions changed later after a period of time elapsed? A. No, I don't think they have been changed.

Q. They remained the same since? A. Yes, sir.

Q. Did you ever reinstate any of the men who were on the picket line? A. I think we did; three or four.

Q. Can you give me the names of any of them? A. Owen Western. I think there are three or four more. I can't recall their names right now.

Q. And the only orders you ever received on the subject were from Captain Hodgson and Mr. Henrie, to go slow until they saw how things were going to work out? A. Yes. You see, things were sort of in a turmoil, and——

Q. By the way, you said that you received those instructions about a week after the strike. Do you mean, after the beginning or the end of the strike? A. No, I mean at the beginning of the strike.

Q. At the beginning? A. It was a week or ten days. I couldn't say definitely; somewhere around in there.

Q. A week or ten days following June 10th? A. Yes.

Q. But at no time did you receive any definite instructions not to re-hire anybody; is that correct? A. No, sir.

Mr. Persinger: I think that is all.

Trial Examiner Kennedy: Cross examination.

Cross examination:

Q. (By Mr. Kitchel) I have just one question, Mr. Bateman. You mentioned the name of Mr. Owen Western as having been reemployed. What was your experience with that case on the question of reemployment? Can you recite whether or not Mr. Western actually went to work after he was reemployed? A. Yes. He is still working, as far as I know. He was when I left.

Q. When was he employed? A. I think about four days after the strike was called; either the third or fourth day; it might have been the fifth day; I can't say now; it was a long time ago. I think it was the first week.

Q. Did he go to work at that time? A. Yes, he did.

Mr. Kitchel: That is all.

Mr. Persinger: That is all.

Examination by the Trial Examiner.

Q. (By Trial Examiner Kennedy) Where is your office located? A. My office is located on Junction Road, opposite the Junction shaft gate, and about 300 feet below it.

Q. Was it there in 1935 at the same place? A. That is where it was in 1935.

Q. How does it happen it took 5 days to get mail to your office from these places? A. Well, you see, this happened on a Thursday—this discharge, as I recall it—and the mines were down Friday—or Saturday and Sunday. Now, if the foreman failed to make out—There was one mail a day to the Cole. If he failed to call for the mail—rather, if the

foreman failed to make up the slip until lunch time, which was generally the practice, you see, I wouldn't get it; it wouldn't leave there until Monday.

Trial Examiner Kennedy: That is all.

Any further questions?

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: Is this witness wanted?

Mr. Persinger: I believe there is one further question I am going to ask at this time. It will save recalling him.

Redirect examination.

Q. (By Mr. Persinger) Did Mr. Day call on you in reference to that discharge, do you remember? A. I believe he did. I saw an account of it in the paper the other day, and I recall having a conversation with Mr. Day.

Q. Do you remember how long that was after the discharges? A. I think it was on a Sunday.

Q. Sunday? A. The Sunday following.

Q. Were you in your office on Sunday? A. No, sir. He came to see me at the Copper Queen Hotel.

Q. Concerning this discharge, or did he come—— A. No, I believe not. It was another matter. It was a matter pertaining to a wage rate, I think.

Q. Yes; I believe that is correct. A. Yes.

Q. Did he come to you on the same day that he received his discharge slip, or the following day, and ask you what it meant, that he didn't know what it meant, and asked you if you could tell him why he had been discharged, after you had explained it was a discharge slip? A. I don't recall that he did.

Q. Do you recall having told him it was on account of intimidation? A. No.

Q. You don't recall that? A. I don't think I discussed it with him.

Q. So far as you can remember, the first information you received on the discharge was the slip that came through the following Monday or Tuesday? A. No. As I recall it, I heard something about it Saturday morning, and I left that Saturday noon and went to Phoenix, and didn't come back until late Sunday morning—Sunday evening.

Q. Do you remember what you heard about it Saturday morning? A. No; something to the effect that there were 6 or 8 men canned at the Cole.

Q. And you had had no informatioin in advance that any of them would be canned? A. No.

Q. And you had no information that these 8, until you heard it indirectly on Saturday morning, had been canned? A. Yes.

Q. And the official notice came through the following week? A. Yes; the following Monday or Tuesday.

Mr. Persinger: I see. That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: That is all.

Mr. Trial Examiner, Mr. Bateman was employment agent during this period. We cannot very well tell at this time whether we will need him or not. It depends upon what other witnesses appear.

Trial Examiner Kennedy: You are temporarily excused, Mr. Bateman. You will not remain in the courtroom.

(Witness temporarily excused.)

Mr. Persinger: Could we take about a 5-minute recess?

Trial Examiner Kennedy: We will take a 5-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Kennedy: The hearing will be in session.

J. G. BERLENDIS called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: J. G. Berlendis.

Direct examination:

Q. (By Mr. Persinger) Mr. Berlendis, what is your position with Phelps Dodge Company? A. Employment agent.

Q. And how long have you held that position? A. Since about the 1st of August, this year—last year, rather.

Q. Had you been previously employed by the company? A. Yes.

Q. In what capacity? A. Cashier was the title.

Q. Were you cashier in 1935? A. Yes.

Q. As cashier, what were your duties? A. Well, payment of the bills, the corporation bills, and the keeping of their general books.

Q. Did you have anything to do with keeping the payroll— A. Not in any way whatever.

Q. You didn't pay the men? A. No.

Q. Now, I understand that you assisted Mr. Bateman in the compilation of certain lists in answer to the subpoena. A. Yes, I did.

Q. If I read off to you the title of each of these lists, can you tell me which ones you prepared, and which ones Mr. Bateman prepared? A. I think I can.

Q. A list of transfers to and from the Cole shaft. A. I had nothing to do with that.

Q. An employment record, that is, the name and date of employment of persons employed or re-employed since June 10, 1935. A. Well, I helped to type that list, yes. I didn't type it all, most of it.

Mr. Persinger: I will offer this for identification as Board's Exhibit 11.

Mr. Reporter, will you mark that for identification?

(Thereupon the document above referred to was marked as Board's Exhibit No. 11 for identification.)

Q. (By Mr. Persinger) I note that in front of each name there appears either a red mark or a blue mark, and on the first page of this list appears an explanation that the blue marks indicate persons hired who had previously worked for respondent at some time between June 10, '34, and June 10, '35. Have you checked that to make sure that the blue mark does indicate those persons? A. Yes, I have checked it.

Q. And is that correct? A. That is correct.

Q. And the red marks indicate persons hired between June 10, '35, and November, '35, who had not previously worked for the company from June 10, '34, to June 10, '35. You also checked that? A. I went through that twice.

Q. And is that correct? A. Yes.

Q. Did you have anything to do with compiling the payroll list for June, 1935? A. I typed one sheet, I don't remember just which one it was, there were several.

Q. One sheet in that list? A. Well, I mean one set of sheets; there are several sets, I understand.

Q. Well, there is a set for June of 1935, and a set for July, August and for September. A. Well, that is what I mean. I think I worked only on the one for the month of July. I wouldn't be absolutely sure. I could tell if I would see it.

Q. Then there are three lists of watchmen, one of regular watchmen, one of extra watchmen, and one of employees used as watchmen. A. I didn't compile that.

Q. You had nothing to do with that? A. No.

Q. And at the present time—strike that.

Mr. Persinger: I don't believe I have any further questions.

Trial Examiner Kennedy: Any cross examination?

Mr. Kitchel: I just have one question.

Cross examination:

Q. (By Mr. Kitchel) Mr. Berlendis, I will hand you Board's Exhibit 11 for identification and you will note that before some of the names instead of a straight line in either a red or blue mark, there is an asterisk in either red or blue. Will you explain what that means? A. Well, in checking through we find that sometimes a man is hired more than once, or he is re-hired more than once, and those with a star evidently have been hired two or more times.

Q. In reaching the totals which you have placed on the recapitulation, for instance, under blue, the figure "69" appears. All those men who were hired more than once counted as a different individual each time? A. They are.

Q. And the same applies to the reds? A. It does.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will it be stipulated that this witness is permanently excused?

Mr. Kitchel: We can't tell yet, Mr. Examiner, on account of his position.

Trial Examiner Kennedy: You are excused, but you are instructed not to stay in the courtroom.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Persinger: Are there any persons in the room who are going to testify for the Board? (No response.)

Lloyd Thomas Buell—For National Labor Relations Board—Direct.

LLOYD THOMAS BUELL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name?

The Witness: Lloyd Thomas Buell.

Direct examination:

Q. (By Mr. Persinger) Are you employed by the Phelps Dodge Corporation, Mr. Buell? A. I am.

Trial Examiner Kennedy: Speak out, please.

Q. (By Mr. Persinger) In what capacity? A. Chief clerk.

Q. And how long have you held that position? A. Since 1925.

Q. You were chief clerk in 1935, then? A. I was.

Q. As chief clerk, what are your duties? A. I have supervision of the accounting records for the branch.

Q. For the entire branch? A. For the Copper Queen Branch.

Q. That includes both the Mines Division and the Smelting Division? A. Yes, I have general supervision of the smelter accounts, but I don't pay much attention to the details of the smelter.

Q. The paymaster, Mr. Hicks, is under you? A. He is.

Q. Now, do you have charge of the records of employment? A. No, sir.

Q. Do you have charge of any efficiency records? A. Yes.

Q. You do? A. Yes.

Q. What efficiency records are kept? A. The records of production in tons per shift worked.

Q. Is that kept for each employee underground? A. No—well, yes, in the stopes; not each employee. That record is kept for each stope at each working place.

Mr. Persinger: Oh, I see.

Mr. Evans: Mr. Trial Examiner, off the record a minute, please.

Trial Examiner Kennedy: Off the record.

(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Persinger) Do you have charge of men's time records? A. I do.

Q. That is the time they work? A. I do.

Q. Do you have charge of the records of payment of wages and salaries? A. I do.

Q. How are time records kept, and what different records do you have? A. What was the question, please?

Trial Examiner Kennedy: Read the question, please.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: The original source of time records is the time card for each man each day that he works.

Q. (By Mr. Persinger) Who fills out that card? A. Either the individual himself or his boss.

Q. Where does that card go from the individual? What does he do with it after he fills it out? A. He gives it—I don't know what he does with it. I imagine he gives it to his boss.

Q. How does it come to you? A. It comes to me in a package with a rubber band around it from outside on the works; that is, there is a rubber band around each package. Each boss sends in his own tickets.

Q. I see. That is, each shift boss? A. Each shift boss or each shop boss, surface boss.

Q. For what purposes are those time records kept? A. They provide us with information for paying men and for distributing the cost of labor to different operating accounts.

Q. Are you informed in case a man is transferred from one department to another? A. Generally.

Q. How does that information reach your department? A. Generally by an advice from the employment department.

Q. Is that in written form usually, or oral? A. Written, generally.

Q. Usually written? A. Yes, sir.

Q. In the case of a lay-off, how are you informed, and by whom, as to what individuals have been or are going to be laid off? A. I don't know of any difference between cases. We are always informed in the same way.

Q. How is that? A. By a written notice that certain men are dropped or transferred.

Q. Does that come from shift bosses or foremen, or from the employment division? A. From the employment department.

Q. In the case of a discharge, does information reach you in the same manner as in the case of a lay-off? A. There are two sources of information in a case of that kind.

Q. What are they? A. The individual may present himself at the window with a request for his time—a written notice of his severance from employment; and we will also get a written notice that a certain man is dropped from the payroll. That all depends whether we get one before the other.

Q. When there is a written notice, where does the written notice that a man is dropped from the payroll originate? A. The employment department.

Q. Before a man can get his pay he has to come to your department for his time slip, is that correct? A. We write all payroll checks and deliver them to the individual.

Q. Do you write out time slips, too? A. We do not.

Q. Do you know which department writes those? A. The employment department.

Mr. Persinger: Counsel has just handed me a perforated sheet.

Q. I will ask you to tell me what it is? A. The bottom half of this sheet is the customary notice of the advice to my department from the employment department to pay a man the amount he has coming.

Q. Does the top half of that sheet go to your department? A. No, it doesn't.

Mr. Persinger: I see. I offer this as Board's Exhibit No. 12.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit No. 12.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 12.)

Trial Examiner Kennedy: Hereafter, counsel, when you are discussing a document with the witness, I suggest that it be marked for identification at the outset, so the record will show immediately what document you are referring to.

Proceed.

Mr. Persinger: I believe that is all.

Trial Examiner Kennedy: Cross examination.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Is it stipulated that you will not recall this witness?

Mr. Kitchell: Yes, Mr. Examiner.

Trial Examiner Kennedy: Mr. Persinger?

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Kitchel: Mr. Buell, will you ask Mr. Hicks to come in?

E. C. Hicks, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: E. C. Hicks.

Direct examination:

Q. (By Mr. Persinger) Mr. Hicks are you employed by Phelps Dodge Corporation? A. Yes, sir.

Q. In what capacity? A. Paymaster.

Q. How long have you held that position? A. Eighteen years.

Q. You were paymaster in June and July of 1935? A. Yes.

Q. What are the duties of your position? A. Well, I am in direct charge of the payroll.

Q. What records are kept for the purposes of making up the payroll? A. Time books and pay rolls.

Q. That is all, just those two sets of records? A. Well, there are a great many different records, but just for the purpose of making up the payroll you have your time cards and time books and payroll sheets.

Q. Do you have supervision over any of the records of the employees? A. Well, in a way, yes.

Q. What records would they be? A. Well, they are records of the store accounts, hospital fees, and bills they owe, and things like that—all the records that go to make up the payroll.

Q. In case a man is transferred from one department to another, how do you receive notice of that transfer so as to make the necessary change on the payroll? A. It shows on the record we receive from the employment department.

Q. And, normally, how long is that received after the actual transfer has been made? A. Oh, we get it in there several times in a period, that is, in a two-week period, three or four days apart, something like that.

Q. And each time a transfer is made you change the payroll number or the check number of the individual who has been transferred? A. We have to change his payroll number, yes.

Q. Now, in cases of discharge, does notice reach you also from the employment department? A. Well, we get a notice that the man has left the service.

Q. What form does that notice take? A. It is on a sheet showing the——

Q. (Interrupting) A printed form? A. No, typewritten.

Q. Typewritten? A. Yes.

Q. And that comes to you from the employment department? A. Employment department; yes.

Q. And normally, then, how long after the actual discharge has taken place, do you receive that notice? A. well, that is on the same sheet from which we get the records of transfers; probably in two weeks we will get four or five of them.

Q. In other words, they don't come in singly, but they come in groups? A. No, it is all in a day's business.

Q. Do you recollect that William Day and certain other employees in the Cole shaft were discharged about June 6, 1935? A. I wouldn't recollect that; no.

Q. You don't remember that? A. No.

Q. This has been marked as Board's Exhibit 10. I will ask you to notice that the third line reads: "June 10, 1935. Quit. Walked out when strike was called and picketed all during strike." And the line below that, the date is June 6, 1935. Now, can you tell me how notice of those would reach you, and whether or not they would normally reach you at approximately the same time, or at different times? A. Well, the records that reached us would simply give us the name and say he left the service.

Q. And would it give the date that he left? A. Yes.

Q. And from that you had his time record all ready, or do you wait for that to come in? A. No, his time record is kept up every day, the time cards come in every day and are posted daily.

Q. And with that notice that you receive that he has left the service, you turn to his time card to make up his check; is that correct? A. No.

Q. What procedure do you use? A. We make up his check from the time slip he presents.

Q. Oh, he presents you a slip. I show you Board's Exhibit 12. Is the lower half of that the time slip which the man himself presents? A. Yes.

Q. And you make up your checks from that? A. Yes.

Q. Who makes up this time slip, do you know? Is that the employment department? A. Well, when we get it it is signed by the employment agent, when we get it from the man.

Q. Are you ever informed in advance that certain men are going to be transferred? A. No, sir.

Q. Or are going to be laid off? A. No, sir.

Q. Or going to be discharged? A. No, sir.

Mr. Persinger: That is all.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Is this witness required further?

Mr. Kitchel: No, Mr. Examiner; not by us.

Mr. Persinger: Not by the Board.

Trial Examiner Kennedy: You are permanently excused. Next witness. (Witness excused.)

Mr. Kitchel: May this be off the record?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Persinger: Call Mr. Crandal.

LEVI CRANDAL, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: State your name.

The Witness: Levi Crandal.

Direct examination:

Q. (By Mr. Persinger) Mr. Crandal, were you formerly employed by Phelps Dodge Corporation? A. I was.

Q. When were you first employed by the Corporation? A. February 2nd, in '27.

Q. And how long did you work? A. I worked 4 weeks and 1 day, and got laid off March 3rd, the same year.

Q. And when did you return to work? A. I went to work at the Calumet & Arizona the 22nd of March, '27.

Q. And you worked how long? A. Until the merger.

Q. And were you laid off at the time of the merger? A. No.

Q. And you continued to work until what time? A. Until June 6, 1935.

Q. What job did you have when you started? A. Mucker.

Q. And what job did you have the 1st of June, 1935? A. I was—the 1st of June, 1935, I was a Finley operator, mucking machine operator.

Q. What is the difference, then, in rate of pay between mucker and mucking machine operator? A. The mucker, that is 4.40, and the mucking machine operator got 5.23.

Q. That is $5.23 a day? A. Yes, $5.23 a day.

Q. Your employment with the company was terminated on the 6th of June, 1935? A. That is right.

Q. Was that voluntary or involuntary? Did you quit, or— A. No, I got fired.

Q. You were fired? A. Yes.

Q. By whom were you fired? A. Ratteree, U. S. Ratteree, the foreman.

Q. And what department were you working in? A. The Cole.

Q. That is the Cole shaft? A. The Cole shaft.

Q. What time of day were you discharged? A. Going on the shift about—I would say about a quarter after 4:00 in the evening.

Q. You were going on the night shift? A. Going on the night shift.

Q. Was anyone with you when you were discharged? A. My brother.

Q. Was anyone discharged when you were discharged, anyone else? A. They was myself and my brother and Art Hall.

Q. The three of you were discharged at the same time? A. Well, Jack Cornet, he wasn't discharged at that time, but I seen the time slip. He had it ready for him, but he was off sick.

Q. And the three of you actually were discharged at the same time? A. Three.

Q. Now, how did Mr. Ratteree inform you that you were discharged? A. Well, I got out of the car and started to the change room and he called me back to the office.

Q. And what did he say and what did he do? A. Well, he didn't say—he says—he just handed me the time slip.

Q. Did you ask him anything? A. I asked him what was the reason. He didn't say.

Q. Was anyone else present? A. The shift boss, Clarence Ridgeway.

Q. Did he say anything? A. No.

Q. Did you ask him anything? A. I asked him, wasn't my work satisfaction? He didn't say nothing; he just shook his head.

Q. Did you inquire of anyone else as to why you had been discharged? A. No.

Q. You were handed your time slip? A. At the office of the Cole.

Q. When did you get your pay? A. Well, I went to get my pay the 21st of June, but I didn't get it; I owed the company store.

Q. I see. A. And they kept the pay.

Q. Was any reason ever given you by any foreman or supervisor or official of the company for that discharge? A. No.

Q. Was any reason written on the slip you had? A. No. It's a discharge; that is all it was.

Q. Are you a member of the International Union of Mine, Mill and Smelter Workers? A. I am.

Q. Local No. 30? A. I am.

Q. How long have you been a member? A. Ever since they got their charter in '33, if I am not mistaken.

Q. You were a member at the time of your discharge, June 6, 1935? A. I was.

Q. Following your discharge, did you notify the Union that you had been discharged? A. I did.

Q. Was any action taken by the Union? A. There was.

Q. What action was taken? A. A strike vote.

Q. How long after your discharge was that taken? A. The next night,—the same—the same night; Friday night.

Q. Friday night? A. Yes.

Q. What day of the week were you discharged? A. Friday night—I was discharged on Thursday.

Q. It was the night of the following day, then? A. Yes.

Q. Do you know how the strike vote came out? A. No, I couldn't say just how it did.

Q. I do not mean the result in number of ballots, but how did the vote run? Was it to strike or not to strike? A. To strike; to strike.

Q. Was a strike actually called as a result of that vote? A. It was. They sent a telegram to the Board member.

Q. What I mean is, Did an actual walkout of the men take place? A. Yes, sir.

Q. When? A. Well, from the Saturday.

Q. Was there any picket line set up? A. Not until Monday.

Q. When you say the walkout took place on Saturday, did the mine work on Saturday? A. No. It taken place the Monday. That's when the strike went in action.

Q. Were you on the picket line on Monday? A. I was.

Q. What was the last day that you remember having been on the picket line? A. Either on the evening of the 23rd or the morning of the 24th.

Q. Of what month? A. Of August.

Q. When was the strike called off? A. The 24th of August.

Q. At any time between June 10, 1935, and August 24, 1935, did you personally apply for reinstatement? A. August 21st.

Q. Where? A. At the employment office.

Q. Was that inside or outside the office? A. Outside.

Q. To whom did you apply? A. Bateman, M. A. Bateman.

Q. Where was he? A. Standing on the steps.

Q. Where were you? A. Out in front of the office.

Q. Was anyone else around? A. Yes; there was a group of men around.

Q. Were there other pickets there? A. There was.

Q. Were there persons who were not pickets present? A. There was.

Q. Did you see Mr. Bateman come out of his office? A. I did.

Q. What did he do and say when he came out? A. Well, he come out, put his foot up on the rail there, and he asked, "Was there any miners in the bunch?"

Q. Did anyone say anything? A. Bill Day says—he was the first one to speak up. He says, "I'm a miner; how about my job?"

There were several more; I couldn't recall their names; and then I asked him, "How about my job?"

Q. And what did Mr. Bateman say? A. He shook his head and says. "No." He says, "You'll never work for the company no more."

Q. Was anything said to that? A. Well, Bill Day asked him—says, "Just whom do you mean? " He says, "You strikers."

Q. Was anything further said? A. Well, there was, but something drawed my attention. I didn't catch all of it.

Q. How much longer did you remain in the vicinity of the employment office? A. Oh, about 10 or 15 minutes, I guess, after that.

Q. And then you went away? A. Yes, sir.

Q. Have you at any time since August 21, 1935, applied for work with the company? A. No.

Mr. Persinger: I will offer as Board's Exhibit No. 13 the employment record of the Witness Levie Crandal.

Trial Examiner Kennedy: You are offering that?

Mr. Persinger: I am offering it in evidence.

Trial Examiner Kennedy: Have you seen it?

Mr. Kitchel: No objection.

Mr. Evans: We have no objection.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit No. 13.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 13.)

Mr. Persinger: Take the witness.

Cross-examination:

Q. (By Mr. Kitchel) Mr. Crandal, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Are you employed at the present time by any employer? A. Shattuck Denn Mining Company.

Q. When did you first go to work for the Shattuck Denn Mining Company? A. In June 7th in '37.

Q. Have you worked continuously for the Shattuck Denn Mining Company since that date? A. I have.

Q. At what occupation are you employed with that company? A. Miner.

Q. Mr. Crandal, were you an employee of the Phelps Dodge Corporation on June 10, 1935? A. I was not.

Q. You have testified, Mr. Crandal, that you were discharged on June 6, 1935, have you not? A. I was.

Q. During the period from that date until the time you started to work for the Shattuck Denn Mining Company, what employment have you had? A. Well, I had several jobs.

Q. Will you tell us what they were in order, starting with June 6, 1935? A. Counting the relief, too?

Q. Well, yes. A. I was on the relief until June—or August the 24th, and I left the day the strike was called off.

Q. You left the relief work? A. Yes, sir.

Q. And then what did you do? A. I went to Kingman—went to mining.

Q. By whom were you employed at Kingman? A. Keystone Mining Company.

Q. Were you employed as a miner? A. A miner.

Q. What was the date that you started, do you recall? A. About the 15th of September.

Q. The 15th of September, 1935? A. '35.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. Every day? A. No, I wasn't every day.

Q. Was it customary during the course of the strike for the picket line to move up behind those rustling jobs at the employment office pretty nearly every morning? A. No, not every morning, or I wasn't there every morning.

Q. Well, the mornings that you were there, didn't the picket line, after the shift had gone on, move in behind those rustling jobs by the employment office? A. Well, usually we would go to town and then come back up.

Q. Come back up at about the time Mr. Bateman would generally appear? A. Yes.

Q. And the pickets would go there as a group? A. Well, they would be there in a group. They wouldn't come there one by one; maybe two or three.

Q. Isn't it a fact that on every occasion that you were present where that happened when Mr. Bateman came out on the platform, the men in your group called out to him and—— A. (Interrupting) No, sir.

Q. (Continuing)—and yelled, "How about a job?" A. No, sir, none that I hear.

Q. In other words, you are testifying that August 21st was the only date upon which that happened? A. That I can remember, yes.

Q. How many men were present at the meeting that you have testified to on the evening of Friday, June 7, 1935?

How many members of Bisbee Miners' Union, Local No. 30? A. I couldn't say for sure.

Q. What is your closest estimate? A. I would say probably 65 or 70.

Q. You testified, Mr. Crandal, that on August 21, 19—strike that.

You testified, Mr. Crandal, that on June 21, 1935, you went to get your pay, but that you did not get any, is that correct? A. That is correct.

Q. Isn't it true that prior to that time you had made a voluntary assignment of your wages in orders to secure credit at the store? A. Well, I signed a card to check off $2.50 a month—a pay—$5 a month.

Q. And that was the reason that you had nothing coming on June 21st? A. Yes, sir.

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you wish to recall this witness, either party?

Mr. Persinger: I don't think that I will have any occasion to recall this witness.

Mr. Kitchel: I don't believe we will recall him.

Trial Examiner Kennedy: You are excused, and you may remain in the courtroom. (Witness excused.)

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: Very well. Proceed.

Mr. Persinger: Call Mr. Hargus.

Edgar Lewis Hargus—For National Labor Relations Board—Direct.

EDGAR LEWIS HARGUS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: State your name, please.
The Witness: Edgar Lewis Hargus.

Direct examination:

Q. (By Mr. Persinger) Mr. Hargus, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. And were you first employed by them about the time when the merger with the C. & A. took place? A. No, sir.

Q. You were employed first when? A. 1924.

Q. And did you work continuously after that? A. No, I worked about three months, I think.

Q. When was the last continuous stretch that you worked? A. 1927 to 1935.

Q. And in what time in between '35 was your employment with the company terminated? A. June 10th.

Q. Are you a member of the International Union of Mine, Mill and Smelter Workers? A. Yes, sir.

Q. And are you a member of Local No. 30? A. Yes.

Q. How long have you been a member? A. Since '33.

Q. Were you a member in June of 1935? A. Yes, sir.

Q. Were you aware on or about June 7, 1935, that a number of union men had been discharged from the employment of the company at the Cole shaft? A. Yes, sir.

Q. Do you remember about when they were discharged? A. (No response).

Q. Do you remember the day of the week? A. It was a Thursday, I believe.

Q. And do you know if the union took any action as a result of those discharges? A. Yes, sir.

Q. What action was taken? A. Called a special meeting.

Q. When? A. The day following the discharge.

Q. That would be on Friday? A. Yes, sir.

Q. And what was the purpose of that meeting? A. Well, they had——

Q. In other words, what was done at the meeting? A. Well, we taken a strike vote.

Q. And did you vote to strike or not to strike? A. Yes, sir, we voted to strike.

Q. And was the strike called? A. No.

Q. You mean you did not strike? A. Oh, yes, we taken a vote for the strike and it went over big.

Q. And did you actually strike? A. Yes.

Q. When? A. On June 10th.

Q. And what day of the week was that? A. That was on Monday.

Q. And was a picket line set up at that time? A. Yes.

Q. Were you on that picket line that day? A. Yes, sir.

Q. And what was the last day that you were on the picket line? A. I don't remember the day, but it was the last part of July.

Q. You were not on the picket line during August? A. No.

Q. And between June 10th and the latter part of July, were you on the picket line frequently? A. Practically every day.

Q. And during that period did you ever apply for work? That is, during the period that you were on the picket line. A. No.

Q. Do you know when the strike was called off? A. I believe August 24th; I am not sure.

Q. And since August 24th have you ever applied for reinstatement? A. Yes.

Q. When? A. Either the last part of October or November in 1935.

Q. Either the last of October or the first of November? A. Yes.

Q. And to whom did you apply? A. Mr. Bateman.

Q. And where? A. In the employment office.

Q. Was anyone present? A. No.

Q. What time of day was it? A. Somewheres around before noon; around 10:00 o'clock, I expect.

Q. And did you see Mr. Bateman in his own office? A. No, he was in the outer office there.

Q. In the outer office? A. I think he was just going off.

Q. And what did you say to Mr. Bateman? A. I asked him, "How's the chance to go back to work?"

Q. And did he make any reply? A. He says that—he said, "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line."

Q. Was anything further said by either of you? A. No, I just turned around and walked out.

Q. And have you applied at any time since then? A. No.

Mr. Persinger: I offer as Board's Exhibit 14 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 14.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 14.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Hargus, are you an employee of the Phelps Dodge Corporation? A. No, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn.

Q. Shattuck Denn Mining Company? A. Yes, sir.

Q. What was the first employment that you obtained after you left the service of the company? A. Well, I worked about two weeks on relief—I worked on the relief.

Edgar Lewis Hargus—For National Labor Relations Board—Cross.

Q. You worked on relief. For what period of time did you work on relief? A. I worked the latter part of June. I don't know just what time, and some of July; then I left.

Q. When did you leave? A. The latter part of July.

Q. Where did you go? A. Well, I went from here to California; from California to Nevada.

Q. Let me ask you, first: You went to California in the latter part of July, 1935. How long were you there? A. I was gone practically two months, I guess.

Q. Did you have any employment while you were there? A. No.

Q. Did you attempt to get employment in California? A. Yes.

Q. Where did you try to get employment? A. Let's see. Well, we had started to Grass Valley. That is where we started, and we got to Sacramento and met some boys coming back from there, and they says it wasn't any use of going up there. They said they had been there and they wasn't hiring anyone, and they was laying off. So we didn't go on up there. We went down in Sacramento there in the employment offices. They have some employment offices there, and there wasn't anything there. So we left.

Q. Where did you go from there? A. To Nevada.

Q. Whereabouts in Nevada? A. Well, we went to—I can't recall the name now. It is down around the mountain district down there—Tonopah.

Q. Did you obtain employment there? A. No.

Q. Did you make any effort? A. Yes. We went down there, but their mine was closed.

Q. What was the first employment that you obtained after leaving the district in July of 1935? A. Asenada, New Mexico.

Q. For whom did you work there? A. I worked for some contractor on the Santa Fe Line there.

Q. What was your job? A. I was running the jackhammer.

Edgar Lewis Hargus—For National Labor Relations Board—Cross.

Q. How long were you employed at that job? A. About two and a half weeks.

Q. Would you give me again the date when you started on that job? A. I don't know the date.

Q. What month? A. September—August, I believe it was.

Q. August of 1935? A. The last part of August.

Q. Did you quit voluntarily at the end of the two weeks? A. Yes.

Q. What was your next employment? A. I come back and I worked for Hood Brothers.

Q. Whereabouts? A. Douglas.

Q. When did you start work with them? A. I don't remember. I don't know the month; it was right after I come back. Just as soon as I come back I went on the job there.

Q. When you came back from where? A. New Mexico.

Q. So it would probably be, then, in September of 1935? A. Yes, I think it was.

Q. You say you went to work for Hood Brothers in Douglas? A. Yes, sir.

Q. How long did you work with them? A. About a month.

Q. What was your job with them? A. Driving a truck.

Q. Did you leave that employment voluntarily? A. Yes.

Q. What was your next employment? A. I drove a truck for Pleasant & Hasler.

Q. Where did you have that job? A. Out here on this Fort Huachuca Road. And you started work on that in the Fall of 1935? A. Yes, sir.

Q. How long were you on that job? A. I think I started in December there and worked two months, I believe; practically that, anyway.

Q. Did you leave that job voluntarily? A. Yes, sir.

Q. That takes us, then, to 1936. What was your next employment? A. Shattuck Denn.

Edgar Lewis Hargus—For National Labor Relations Board—Cross.

Q. With the Shattuck Denn Mining Company? A. Yes, sir.

Q. When did you start work for them? A. I don't—let's see. Either February or March of 1936.

Q. What job were you employed at with the Shattack Denn Mining Company? A. Mining.

Q. Did you have regular employment with them? A. Yes.

Q. Have you worked for them continuously since that date? A. No.

Q. When did you leave your employment with the Shattuck Denn Mining Company? A. December.

Q. Of 1936? A. Yes.

Q. Did you leave your employment voluntarily at that time? A. Yes; I had a better job.

Q. What was your next job? A. For the Banner Mining Company in Lordsburg.

Q. In Lordsburg, New Mexico? A. Yes.

Q. What job did you have with the Banner Mining Company? A. Shift boss.

Q. How long did you work for them? A. Eight months.

Q. That is, then, from December, 1936, for a period of 8 months into 1937? A. Yes.

Q. Why did you leave that job? A. Got tired of it; I didn't like it.

Q. You left it voluntarily, did you not? A. Yes. I didn't like the location over there.

Q. What was your next employment, Mr. Crandal, after you left the Banner Mining Company? A. My name isn't Crandal.

Q. Excuse me. Mr. Hargus. A. I went to work at the Shattuck Denn.

Q. At what date did you go to work for the Shattuck Denn the second time? A. Let's see. I believe it was in October of 1937.

Edgar Lewis Hargus—For National Labor Relations Board—Cross.

Q. Have you worked with them continuously since that date? A. Yes.

Q. Are you employed by the Shattuck Denn Mining Company now as a miner? A. Yes.

Q. You spoke of a meeting of Bisbee Miners' Union, Local No. 30 on the evening of Friday, June 7, 1935, did you not, in your direct examination? A. Yes, sir.

Q. How many were present at that meeting, Mr. Hargus? A. I couldn't say the exact number, but I would say between 75 and a hundred men.

Q. Were they all employees of Phelps Dodge Corporation? A. Yes, sir.

Q. Every one of them? A. I would say they were. I wouldn't swear to it.

Q. Do you know? A. I am sure they were. They had no other reason to be in there. They are not supposed to be there.

Q. Was the membership in Bisbee Miners' Union, Local No. 30, confined only to the employees of Phelps Dodge Corporation? A. No.

Q. Was this meeting called for only those members who were employees of the company? A. Yes sir. It was a special meeting.

Q. What notice did you receive of the meeting? A. I was told.

Q. By whom? A. By the President, Earl Morrison.

Q. What day was that? A. That was Thursday.

Q. What day did you say you talked to Mr. Bateman about employment? A. I didn't say any date.

Q. Well, approximately what time of the year, and what year? A. It was either the last part of October or along the first of November.

Q. Of 1935? A. Yes.

Q. Well, haven't you testified that you were out of the state at that time? A. No, sir.

Edgar Lewis Hargus—For National Labor Relations Board—Cross.

Q. Where were you working at that time? A. I wasn't working. I had just come off this job from Hood Brothers.

Q. With Hood Brothers in Douglas? A. Yes.

Q. Did you go in to interview Mr. Bateman? A. That's what I went in for, but I met him in the outer office there.

Q. And you testified, I believe, that it was about 10:00 o'clock in the morning? A. Somewheres around that time.

Q. You are willing to state under oath that the statements that you have repeated that Mr. Bateman made are the truth? A. Yes, sir.

Q. How long were you in the picket line? A. From the 10th of June to the latter part of August—July.

Q. In that period of time, Mr. Hargus, were you mixed up in any fights in the district? A. Yes, I was.

Q. Were you at any time arrested? A. Yes, sir.

Q. What was the charge? A. Assault and battery.

Q. Upon whose person? A. A fellow by the name of Riley, I believe.

Q. Was he an employee of the company? A. Yes.

Q. Who was arrested with you at that time? A. Levi Crandal.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: No questions.

Q. (By Trial Examiner Kennedy) What was your pay at the respondent company at the time you were discharged? A. $5.00.

Q. $5.00 a day? A. Yes, sir.

Q. What are you now drawing at the Shattuck Denn mine? A. $5.48.

Q. Do you desire to return to the respondent company? A. I don't quite understand you.

Q. Do you want to go back to the Copper Queen? A. Yes, sir.

Q. Why? A. Well, I don't know. I have always worked for them ever since I have been here; that is, up until that time.

Q. You would rather go back there at $5.00 than stay at your present job at $5.48; is that right? A. No, sir; I would expect the same pay.

Q. You would expect $5.48 if you went back to the Copper Queen? A. Yes, sir.

Q. But if you only got $5.00 you would not want to go back? A. No, I wouldn't take anything under the scale.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: Nothing further.

Mr. Persinger: I have nothing further.

Trial Examiner Kennedy: Just one more question. Where is the Shattuck Denn mine?

A. It is northeast of Lowell.

Trial Examiner Kennedy: How far?

The Witness: I would say three-quarters of a mile, half a mile.

Trial Examiner Kennedy: That is all.

Mr. Kitchel: May I ask one more question?

Recross examination:

Q. (By Mr. Kitchel) You testified, Mr. Hargus, I believe, in August, 1935, you were employed by some contractors in New Mexico, running a jackhammer? A. Yes.

Q. What was the rate of pay that you received at that time? A. 60 cents an hour.

Q. And how many hours did you work per day? A. 9 hours, I believe. I am not positive, though.

Mr. Kitchel: That is all.

Mr. Persinger: That is all.

Trial Examiner Kennedy: You are excused. Do you want to recall this witness any further?

Mr. Kitchel: I don't believe so.

Mr. Persinger: I don't think we will recall him.

Trial Examiner Kennedy: You may stay in the courtroom if you desire to.

Mr. Persinger: Could we take a 5-minute recess?

Trial Examiner Kennedy: We will take a 5-minute recess.

(Short recess.)

Trial Examiner Kennedy: The hearing will be in session.

JOHN HENRY KEY, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name?

The Witness: John Henry Key.

Direct examination:

Q. (By Mr. Persinger) Mr. Key, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. I am not sure; it was around sometime in '28.

Trial Examiner Kennedy: Of 1928?

The Witness: 1928, yes.

Q. (By Mr. Persinger) And how long did you work continuously after your first employment? A. Up until that—the big slump.

Q. And when did you go back to the company's employ? A. Well, I went back somewhere in—I am not sure of the date— '31.

Q. And how long did you work? A. About a month.

Q. And did you go back again around '34? A. Around '34; yes.

Q. And how long did you work that time? A. Up until we came out on strike.

Trial Examiner Kennedy: Up until when? I can't hear you.

The Witness: Until we come out on strike.

Q. (By Mr. Persinger) Are you a member of the International Union of Mine, Mill and Smelter Workers, Local No. 30? A. I am.

Q. How long have you been a member? A. A very short while.

Q. You were not a member at the time of the strike? A. Yes.

Q. You were a member then? A. Yes.

Q. And were you present when a vote was taken to determine whether or not to go out on that strike? A. Strike vote?

Q. Yes. A. I was.

Q. Do you remember when that vote was taken? A. On the 7th of June.

Q. And how did the vote come out—that is, did you vote to strike, or not to strike? A. The vote come out to strike.

Q. And when did the strike actually take effect? A. The 10th of June.

Q. What day of the week was that? A. Monday.

Q. What was the first—— Was there a picket line established? A. There was.

Q. What was the first day you were on the picket line? A. Monday.

Q. The first day of the strike? A. Yes.

Q. And when was the last day you were on the picket line? A. I think it was the 24th or 25th.

John Henry Key—For National Labor Relations Board—Direct.

Q. Of what month? A. Of August.

Q. In other words, the last day of the strike? A. Yes; I was on it the last day.

Q. And between June 10th and the end of the strike, were you on the picket line frequently? A. I was.

Q. And at any time during the progress of the strike did you ever apply for work with the company? A. Along about two or three days before the strike was called off I was up at the employment office and applied that morning.

Q. And you applied to whom? A. Mr. Bateman.

Q. Where was he? A. He was standing out on the platform in front of the employment office.

Q. Were you the only person there? A. No.

Q. Were there other strikers present? A. Yes, sir.

Q. Were there other persons present who were not strikers? A. Yes, sir.

Q. Were you there when Mr. Bateman came out of his office onto the porch? A. I was.

Q. What did Mr. Bateman do when he came out? What did he say? A. Well, he came out on the platform and he looked around and looked the bunch over and he says, "Any miners in the crowd?"

Nobody spoke up for a second, and then Bill Day spoke up and he says, "I'm a miner. How about my job?"

And Mr. Bateman looks around and he says, "None of you fellows will ever go back to work for the company again."

And Mr. Bill Day, he asked him—he says, "Who do you mean by 'you fellows'"?

And Mr. Bateman, he says, "I mean you strikers."

Q. Was anything further said? A. That's all that I remember hearing.

Q. Well, did you actually apply for your job at that time? A. I spoke up, too, yes.

Q. When? A. The same time; right after Bill spok up. There were 7 or 8 in the bunch that hollered out, to I couldn't say for sure how many.

Q. And since the strike has been over, have you at an time applied for reinstatement? A. Yes, I have.

Q. When? A. About six months after it was ove somewhere around there.

Q. Where did you apply? A. Mr. Bateman's office.

Q. Was anyone present? A. Not in the room, no.

Q. What time of day was it? A. I would say arou between 8:30 and 9:00.

Q. In the morning or evening? A. In the morning.

Q. What did you say to Mr. Bateman? A. I walke in and I asked Mr. Bateman, "How about a chance to g back to work?"

And he spoke a few words—he says, "Well, Key," I says, "I'll take your case up." He says, "You come ba within about a week and I'll let you know."

Q. Was anything further said at that time? A. N that I remember.

Q. Did you go back in about a week? A. I did.

Q. Did you see Mr. Bateman? A. Yes.

Q. Where? A. In his office.

Q. Was anyone there at that time? A. Not that I r member; no.

Q. What did you say to Mr. Bateman at that time? I walked in. Mr. Bateman, he never said nothing. I sto there a few minutes, and I said—I spoke first. I sai "Well, Mr. Bateman," I said, "what did you find out "Well," he says, "I can't do a thing for you."

Q. Did you say anything? A. No. That's about all said.

Q. Did he say anything else? A. No. He went rig on writing, or whatever he was doing.

Q. Have you applied at any time since then? A. N I haven't.

Mr. Persinger: I offer as Board's Exhibit next in order, the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 15.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Key, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Are you employed at the present time? A. I am.

Q. By whom are you employed? A. Shattuck Denn.

Q. Shattuck Denn Mining Company? A. Yes, sir.

Q. Have you ever been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, I have not.

Q. When did you first commence work with the Shattuck Denn Mining Company? A. I am not certain what day; it was in September, 1935; sometime in September.

Q. September, 1935, was when you first went to work for the Shattuck Denn Mining Company? A. Yes, sir.

Q. On what job were you employed with them? Were you a miner? A. Excuse me; the first time was in '26.

Q. Well, I mean, subsequent to June 10, 1935, Mr. Key. And September, 1935, was the first time after June 10, 1935, that you went to work for the Shattuck Denn Mining Company? A. Yes.

Q. What was your job with them at that time? A. Shaft man.

Q. How long did you stay at work with them? A. Approximately about two and a half months, until they started concreting.

Q. Did you leave your job voluntarily at that time? A. I did.

Q. Were you employed at any time between June 10, 1935, and the time you went to work for Shattuck Denn Mining Company in September of 1935? A. I didn't get that.

Mr. Kitchel: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Well, no; September—two and a half months.

Q. (By Mr. Kitchel) Well, I am talking about prior to the time you went to work for the Shattuck Denn Mining Company. I will put it this way. Were you unemployed at all times between June 10, 1935, and September, 1935? A. No, I wasn't.

Q. What employment did you have in that period? A. I worked in a shaft in Idaho.

Q. In a shaft in Idaho? A. Yes.

Q. When did you start to work there? A. Around the 1st of February.

Q. Of what year? A. Of 1936.

Q. Well, I am still talking about 1935, Mr. Key. You have testified that you went to work for the Shattuck Mining Company in September of 1935. A. Yes.

Q. I am asking you whether or not you were unemployed from June 10, 1935, up until September, 1935? A. I was.

Q. You had no employment whatsoever? A. No.

Q. Did you work on relief during that period? A. No, that was afterwards; that was after I came back from Idaho, in '36.

John Henry Key—For National Labor Relations Board—Cross.

Q. When you left your job with the Shattuck Denn Mining Company, as you have testified, after approximately two-and-a-half months, which would take up until November of 1935, where did you go then? A. In November? Well, I was around town here for quite a while, and then after I left the Shattuck Denn I went to Idaho.

Q. That was late in the fall of 1935? A. No, that was in about the middle of January, '36.

Q. Whereabouts in Idaho did you go? A. Sunshine Mine, Kellogg.

Q. Sunshine Mining Company at Kellogg, Idaho? A. Yes, sir.

Q. Were you employed as a miner by that company? A. I went to work in the shaft, shaft man.

Q. Is that your usual job, shaft man? A. No, it was up until after I come out on strike.

Q. How long did you work for the Sunshine Mining Company? A. About two months.

Q. Why did you leave there? A. It was too cold; I couldn't stand the cold.

Q. Where did you go from that job? A. Came back to Bisbee.

Q. What was your next job? A. I hired out to a leaser, Jim McKenna.

Q. Jim McKenna? A. Yes, sir.

Q. And what was your job with Mr. McKenna? A. Timberman.

Q. Approximately what date in 1936 did you go to work for Mr. McKenna? A. I couldn't say; I don't remember.

Q. Can you tell me approximately what time of the year it was? A. In May, I would say; I am not certain.

Q. Was the matter of getting a job during that period a matter of importance to you? A. It was. I needed it pretty bad.

Q. How long did you work for Mr. McKenna? A. Well, I think I worked two weeks.

Q. Did you leave that job voluntarily? A. I didn't.

Q. Were you discharged? A. Yes, sir.

Q. And what was your next job? A. Shattuck Denn.

Q. And what date did you commence working for them for the second time? A. Around the last of August, I believe.

Q. The last of August, 1936? A. '37.

Q. You haven't accounted for yourself during the year 1937 at all. Was it shortly after you were discharged from Mr. McKenna's employ? A. No; I rustled for a month and a half or better.

Q. You were in the district continuously for a month and a half after you ceased working for Mr. McKenna? A. I was.

Q. And then you went to work for the Shattuck Denn? A. I did.

Q. That would be, then, in the month of August, 1936, would it not? A. '36.

Q. And have you worked for the Shattuck Denn since that time continuously to date? A. I have.

Q. And you are employed by the Shattuck Denn Mining Company at the present time? A. I am.

Q. Is it not a fact, Mr. Key, that you went to work for the first time, after June 10, 1935, with the Shattuck Denn Mining Company on August 27, 1935? A. I am not certain of them dates.

Q. You have testified that the picket line was disbanded on August 25. You were very definite on that date. Now, can't you put your mind on three days later and tell me whether or not that is not a fact? A. Just right around the 24th or the 25th, but I am not sure on that date.

John Henry Keys—For National Labor Relations Board—Cross.

Q. Well, how many days after that was it that you went to work for the first time at the Shattuck Denn? A. I could not tell you.

Q. Was it a matter of days or a matter of weeks? A. It seems to me like it was a couple of weeks. It seems that way.

Q. Your memory is a little bit short on these dates of employment, isn't it? A. I am a very poor hand at remembering dates.

Q. But your conversations, you remember them quite clearly, don't you? A. Some of them I do.

Q. Did you leave for Kellogg, Idaho, immediately after you left the employ of the Shattuck Denn the first time? A. There was a day or two in there that——

Q. You left a day or two after you left the Shattuck Denn? A. Yes.

Q. Which was in February, 1936? A. I think it was in January.

Q. Around January or February? A. Yes—well, no, it was around in January.

Q. Did you leave the Shattuck Denn Mining Company for the purpose of going to Kellogg, Idaho? A. No, at that time I didn't.

Q. Why did you give up your job at the Shattuck Denn? A. Concrete—you can't work around—I can't work around concrete. It poisons my blood, I guess. Big boils break out on me.

Q. You stated on direct examination that approximately six months after the end of the strike you went to see Mr. Bateman on a certain morning; is that correct? A. Somewhere around six months; yes.

Q. Was that before or after you went to Kellogg, Idaho? A. That was a few days after I came back from Idaho.

Q. How long were you in Idaho? A. A few—I worked there about two months at the Sunshine.

Q. Can you tell us the day of the week that you called on Mr. Bateman? A. No, I couldn't.

Q. Can you tell us the month? A. No, I couldn't.

Q. Can you tell us the year? A. '36.

Q. And then it was after that visit to Mr. Bateman's office, you testified you went to work for Mr. McKenna? A. I don't remember.

Q. How many members of Bisbee Local No. 30 were present at the meeting June 7, 1935? A. Well, I couldn't say for sure. I would say around between 90 and 100; somewhere around there.

Q. Between 90 and a hundred? A. Somewhere around a hundred.

Q. How did you happen to go in to see Mr. Bateman about six months after the end of the strike? Were you standing outside of the office, and were you called in? A. No, sir.

Q. Did any others go in to see him at that time? A. I wasn't until the bunch left. There were a few around there; two or three, I believe, rustling.

Q. What time of day did you say it was? A. Around 9:00 o'clock.

Q. 9:00 o'clock in the morning? A. I think there were two there that morning; two or three.

Q. Will you speak that again, please? A. I did not hear you. A. I believe there were two or three men there that morning rustling.

Q. Two or three rustling? A. Yes.

Q. Do you know of anybody being hired that morning? A. I don't know.

Q. Was anybody present with you when you spoke to Mr. Bateman? A. No, sir.

Q. Was anybody else with Mr. Bateman? A. No, sir; not that I remember.

Q. Where did you live during the strike, Mr. Key? A. I stayed with my folks most of the time.

Q. Where did they live? A. They lived just out of the town on a little ranch.

Q. Did they live anywhere near what is known as the "Seven Mile Bridge"? A. I never heard of that.

Q. Well, the bridge on the highway that goes to Elfrieda, about 7 miles out of the district here? A. No; just down at the canyon, my folks live.

Q. What is that again? A. They live just out of the canyon—my folks live.

Q. In the valley? A. Right at the head of the mountains; right at the foothills of the mountains.

Q. Are you acquainted with some men called "Gojkovich"? A. You mean Gockovich?

Q. Gockovich, it is. A. Yes, I am.

Q. Are they employees of the company? A. (Pause).

Q. Let me ask you if they were employees of the company in June and July of 1935, if you remember? A. Well, I don't believe they was. I don't remember.

Q. You don't remember. You don't know whether or not they were employed? A. No, I don't.

Q. Do you recall any occasions during the course of the strike and when the picket lines were established of men being held up and attempts made to stop them from getting out to their jobs right near your house? A. I do not.

Q. You have no recollection of that? A. No.

Q. Have you any recollection of any shootings? A. No.

Q. Isn't it a fact, Mr. Key, that you yourself shot a hole through a car in which the Gockovich boys were riding when they were on their way to work? A. No, sir; I did not.

Q. You deny that? A. I deny it.

Q. What type of work are you doing for the Shattuck Denn at the present time? A. Drift work.

Q. Employed as a miner? A. Machine man.

Q. Machine miner? A. Yes.

Mr. Kitchel: That is all.

Mr. Persinger: No further questions.

John Henry Key—For National Labor Relations Board—Cross.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You say you are now a machine miner with the Shattuck Denn? A. Yes, sir.

Q. What job did you have when you left the Copper Queen? A. Was a raise man and stope man, making raises and stopes.

Q. What pay did you get at the time you left the Phelps Dodge? A. $5 a day.

Q. What pay are you getting now? A. $5.48.

Q. When did you first get more than $5 a day with your present employer? A. The Shattuck Denn?

Q. Yes. When? A. September

Q. September of 1937? A. 1935.

Q. In September of 1935? A. Yes.

Q. Have you continuously drawn that much pay since that time? A. No. It has been up and down.

Q. Has it ever been less than $5 a day? A. No.

Q. Have you been continuously employed by Shattuck Denn since September, 1935? A. I have not.

Q. When was the last time that you started to work for Shattuck Denn? A. I can't say for certain.

Q. Well, has it been within the last six months? A. No I worked—spent over a year.

Q. You have been working there over a year continuously? A. Yes.

Q. Longer than December of 1936? A. Yes. I would say it was a little over.

Q. Since December 1st, 1936, you have been working continuously with Shattuck Denn, is that right? A. Yes.

Q. And all of that time you have drawn more than $5 a day. Is that correct? A. Except the days I was off,—the days I worked there.

Q. Well, what is the average number of days that you have worked? What has been your average work in that period of time? A. Drifting.

Q. No. What do you average a week? How many days a week? A. I average about six.

Q. About six days a week since December 1, 1936? A. Yes.

Q. What did you average for the last year that you worked for the Phelps Dodge? How much time a week? A. Five days.

Q. About five days. So you have been employed more steadily with Shattuck Denn than you were with Phelps Dodge in this last year? A. Yes.

Q. Do you want to go back to Phelps Dodge? A. Well, I would rather, yes.

Q. Why? A. Well, I have a family to feed, and it is the best place to work. I figure a man can live longer and it's more sure of your job. Shattuck Denn—you may have a job today, and it is a small outfit, and they may be closed down next week.

Q. Would you rather go back to Phelps Dodge at $5 a day than to stay at Shattuck Denn at $5.48? A. Well, they are paying the same now as the Shattuck Denn.

Q. They are now paying the same? A. Yes.

Q. Paying $5.48 now? A. Yes, sir.

Q. Well, supposing you have to go back at $5. Which would you rather do?

Mr. Persinger: I submit, Mr. Examiner, that is an unfair question.

Trial Examiner Kennedy: I want the opinion of the witness.

The Witness: Well, I would be more sure of a job longer if I went back.

Q. (By Trial Examiner Kennedy) Well, which would you take? A. Well, I guess I'd take the job back.

Q. With Phelps Dodge? A. Yes.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: What was the answer?

Trial Examiner Kennedy: Read the answer, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: Any further questions?

Mr. Persinger: Nothing further.

Mr. Kitchel: I have nothing further.

Trial Examiner Kennedy: Will this witness be permanently excused?

Mr. Kitchel: I have nothing further from the witness.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are permanently excused. You may remain in the room if you desire. This will be off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record. We will be in recess until 1:30 this afternoon.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p. m. of the same date.)

AFTER RECESS.

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger, for my information I would like to ascertain the Board's theory as to some of these witnesses who have testified they have been discharged. For example, the last one, Mr. Key; I would like to

ascertain whether or not the Board maintains that he has not obtained other regular and substantial equivalent employment.

You do not have to answer that at this time, if you do not wish to, but I would like to get your theory on it.

Mr. Persinger: I think, as Mr. Key suggested, for one thing, the Shattuck Denn mine is a smaller outfit and does not have the regularity of operations that a large outfit such as the Copper Queen does have; and I have not given any particular thought to analyzing the various reasons for the position the Board takes. I would rather make a more complete answer at a later time.

Trial Examiner Kennedy: We will assume, until the matter is finally disposed of, that the Board takes the position, then, that at least as to Mr. Key, that he has not obtained substantially equivalent employment?

Mr. Persinger: Yes.

Trial Examiner Kennedy: All right. Proceed.

Mr. Persinger: Mr. Fisher, will you take the stand, please?

J. W. Fisher, a witness called on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: J. W. Fisher.

Direct examination:

Q. (By Mr. Persinger) Mr. Fisher, are you employed by the Phelps Dodge Corporation? A. Yes, sir.

J. W. Fisher—For National Labor Relations Board—Direct.

Q. In what capacity? A. Foreman.

Trial Examiner Kennedy: What was that?

The Witness: General foreman.

Trial Examiner Kennedy: Speak out so that everybody can hear.

Q. (By Mr. Persinger) Over what division are you general foreman? A. The Junction, the Campbell and the Cole shaft.

Q. How long have you held that position? A. Three years.

Q. How long have you held that position? A. Three years.

Q. Three years? A. Yes, sir.

Q. Do you remember the date when you became general foreman? A. Oh, approximately the 21st of January.

Q. Of what year? A. 1935.

Q. What, briefly, are your duties as to the general foremanship? A. Well, I have assistant foremen with me, and shift bosses. My duty is general underground work over the three shafts.

Q. In your capacity as General Foreman, do you have anything to do with the promotion of a man, say, from mucker to miner? A. No, very little. That is done by the shift bosses and the foremen of the different divisions.

Q. They normally would not consult you on that? A. That is very seldom taken up with me.

Q. Would you be notified of such changes? A. Not always, no.

Q. Now, in the case of a transfer of a man from one shaft to another: I believe the request comes to you, does it not? A. In some cases, yes. The foreman of a different shaft might ask me for so many men, and in some cases he would go to the foreman of another division, another shaft, and that foreman, in turn, would go through his shift bosses, for so many men. They get the first order from me.

Q. In other words, under all conditions you would not yourself select the men to be transferred? A. Not individually, no.

Q. Well, now, when transfers are made to the Cole shaft, I believe they were made off and on over a period of about 12 or 14 months after the shaft opened? A. Yes.

Q. Now, who selected the various men to be transferred to the Cole shaft? A. Well, the first operation there I think was the repairing of the Cole shaft. That is, they got that finished, started to clean up, open up their mine, and they required a crew to do it. They had to get an organization over there, and those men were sent from the Campbell, from the Junction, which were the only two operating shafts at that time, I think.

Q. Do you know who did the actual selecting of the men? A. The foremen and shift bosses, I think, would be asked for men. Mr. Ratteree, I think, was the foreman at the Cole shaft. That is, he required it, required men to start his work and he would ask for so many men.

Q. And do you know if that same method of transferring men was used up until the 1st of June of 1935? A. I think that is always been the practice.

Q. Did you yourself receive any orders concerning the selection of men to be transferred to the Cole shaft between June, 1934, and June, 1935? A. Any specific orders for particular men?

Q. Or any orders about how you should select particular men? A. Well, when you ask a foreman of a shaft to transfer so many men, we will say a dozen men, you tell him that you want so many muckers, so many miners, some machine men in that bunch. If they are not picked by the man that is going to work them in another shaft, naturally the man that is going to send those men are going to send the man that he doesn't need. The weak ones will come first. You would naturally see the way clear to get rid of those men; let somebody else have them. That is only a natural condition.

J. W. Fisher—For National Labor Relations Board—Direct.

Q. Now, in June of 1934, several men were transferred from A and B divisions to the Cole shaft. Their names were Charles Toops, A. B. Potter, Carl C. Cook, Robert L. Powell, Albert E. Garland, V. C. Crandal, J. L. White, Frank C. Bailey, Thomas A. Brown, P. C. Lytle, Joe T. Woods, and Thurman W. Pruitt. Now, at that time did you personally know any of those men? A. Oh, yes.

Mr. Kitchel: I object to that question, Mr. Trial Examiner. I can't see that there is any relevancy, any need for going into the names of any individuals in July, 1934; it has no bearing on any of the issues in this case.

Mr. Persinger: If the Examiner please, those individuals were also in the Cole shaft in June of '35, and I don't remember whether I read the names of any one of the eight who were discharged, or not.

Trial Examiner Kennedy: Are they all included in the complaint, and were later discharged?

Mr. Persinger: They are not included in the complaint, but they were all members of the Union. In fact, I intend to show that on May 29, 1935, there were 66 men in the Cole shaft, and out of those 66 men, 62 were union men, four non-union men.

Mr. Kitchel: That might be true all throughout the mine, so far as that is concerned.

Trial Examiner Kennedy: If it showed any background in the complaint of discharges I would let it go in.

Mr. Persinger: It shows the background leading up to those discharges. At least, that will develop, I hope.

Mr. Kitchel: Mr. Examiner, I don't believe any foundation has been laid for that at the present time.

Trial Examiner Kennedy: I will let it go in subject to a motion to strike if it is not connected up. Is the answer to the question in, Mr. Reporter?

The Reporter: Yes.

Trial Examiner Kennedy: Read the answer, please.

(Whereupon the answer was read by the Reporter as above recorded.)

Q. (By Mr. Persinger) And did you know at that time that those men belonged to the Union? A. No, I had no way of knowing that they belonged to the Union. They never furnished me with any list of their membership.

Q. Your answer is that you did not know? A. I had no way of knowing, I say.

Q. Yes, but did you know? A. No, I could not say that I knew. I had no way of knowing, so I didn't know.

Q. Now, did you personally select any of those men to be transferred? A. That is some time ago; that is three or four years ago, isn't it?

Q. I know it. A. Three years ago. I can't say that I did.

Q. You don't remember whether you did or not? A. I couldn't say that I particularly picked any one of those men for transfer. In transferring, like I said, there is a great many men involved.

Q. Could you say that you did not pick any of them? A. No, I couldn't say that exactly. The chances are I did pick some of them.

Q. Did you at any time give any instructions to any foreman or shift boss to select union men to be transferred to the Cole shaft? A. No, sir.

Q. Did you at any time receive instructions from any of your supervisors to select union men to be transferred to the Cole shaft? A. No, sir.

Q. And the fact that substantially all who were transferred were union men would merely be a coincidence, is that correct? A. I would think so.

Q. What are the usual reasons for discharging men? A. Oh, there are a great many; sometimes dangerous men

—men that do not work safely; other times men fail to do their work. There are so many reasons that it would be hard to mention them all, but those are the main reasons.

Q. Who customarily recommends discharge? A. The shift boss and foreman, and sometimes the general foreman.

Q. In case the shift boss should recommend the discharge of a man, to whom would he give that recommendation? A. He would discharge the man.

Q. He would just discharge the man? A. He wouldn't have to take it up with anybody. He has that authority.

Q. Would he normally inform his foreman or you? A. He might take it up with his mine foreman—that is, the shift foreman of that division. It wouldn't necessarily reach me at all.

Q. Would he necessarily take it up with his foreman? A. Yes, very often.

Q. Yes. A. It is in very rare cases where a shift boss discharges a man without a lot of warning and taking it up with his superior.

Q. Have you ever discharged a man without the foreman or the shift boss saying anything to you about it? A. Have I?

Q. Yes. A. Yes, sir.

Q. When a man is to be discharged, is any notice given to him in advance that he is going to be discharged? A. No, no. He's warned on different things, but you don't tell him today that he is going to be discharged next week or the week following. We don't do that.

Q. What is this warning that you speak of? Is that spoken to him, or is it a written notice. A. Oh, no; it is a written sheet. There is a written notice sent to him for violations of safety work and sometimes laying off too much and not tending to his work.

J. W. Fisher—For National Labor Relations Board—Direct.

Q. Who makes out those warning notices? A. The shift boss makes those out, and they are signed by the foreman of the shaft.

Q. What sort of a notice does a man receive when he is actually discharged? A. A time sheet to the employment manager.

Q. Who makes out the time slip? A. That's made out by the shift boss, signed by the foreman.

Q. Normally in such a case as that, where the shift boss makes out the time slip, the foreman signs it, the shift boss gives it to a man and says, "You are discharged"? A. Sometimes the foreman discharges and makes it out himself. It is not always the shift boss.

Q. You need not know about that until some time later? A. No. In lots of cases like that it doesn't reach me at all. Sometimes a man comes to me about that and has his hearing. Very often they are put back to work.

Q. Did you know Mr. Bill Day? A. Yes.

Q. Do you remember that he was discharged about the 6th of June, 1935, just a few days before the strike? A. The 6th of June?

Q. Yes. A. I think he was one of several who were discharged.

Q. About eight men? A. Eight of them?

Q. Did you know that any of those men were going to be discharged? A. No, I didn't.

Q. You were not consulted about those discharges? A. No. At that time there was discussions amongst the bosses, the managers. We were having some little trouble over there.

Q. You yourself were not in on those discussions? A. Yes, I was.

Q. You were? A. Yes, sir.

Q. Do you know when those discussions began; how long before the discharges, that is? A. About the day before.

We had some trouble over there and thought we would clear it up.

Q. Do you remember what the trouble was? A. The foremen—oh, yes. There was a report that reached us from the foremen and shift bosses that barking, yelling——

Q. What? A. Barking—one bunch of men barking at others and threatening them, shutting water off, pushing them off the cage, and things like that, and we sought to clear up that situation. After talking to Mr. Ratteree, getting the names of the different ones to let those six or eight, or whatever you say there were——

Q. Eight, I believe. A. —go, and he said we were having to clear out the 66 men that had come to a show-down—who were going to run the Cole, the management or just these few men that were very badly dissatisfied. We sought to clear it up by letting those men go. It did clear up the next day. Things were quiet.

Q. Ominously quiet, were they not? A. No. There was still 58 or 59 men working the next day.

Q. And Mr. Ratteree actually selected the men who were to be discharged from the Cole on that occasion? A. No, Mr. Ratteree didn't. They were talked over with Ratteree and myself and the management.

Q. Who told you, and who told the management, which men had been doing the pushing and which men had been doing the barking and shutting off the water? A. We got those complaints in many ways. Mr. Ratteree——

Q. How is that? A. Mr. Ratteree——

Q. He gave you some of the information? A. He was the foreman of the shop at that time, and he said that was about the——

Q. In other words, Mr. Ratteree then told you the names of the 8 men who were doing most of the pushing? A. No; there was a lot more mentioned.

Q. How is that? A. There was several others mentioned.

J. W. Fisher—For National Labor Relations Board—Direct.

Q. Do you remember how many were mentioned, approximately? A. No, I couldn't say; too far to go back.

Q. I know. But you didn't discharge all the men whose names were mentioned in that connection, is that right? A. I couldn't say that. I don't remember for sure whether there was many more mentioned or not, but I think there was. There were those that were discharged or picked out by Mr. Ratteree and myself for the management. It was to clear up this.

Q. What I was trying to get at is, out of what group did you pick those names? A. Out of the whole mine.

Q. Out of the whole mine? A. Yes.

Q. How did you go about picking them? How did you select Day rather than John Smith or someone else? On what basis did you select them? A. Well, those that had been causing trouble over there; very dissatisfied; a very bad condition existed at that time. Like I say, it was a case of move six or eight of them, or maybe more, to clear that up—either that or close down.

Q. What I want to know is, you say you selected those who had been doing most of the pushing, most of the barking? A. That's the way it came to us from the foremen and other supervisory forces.

Q. In other words, Mr. Ratteree and other shift bosses under him gave you the names of the men who had been doing most of the pushing and the barking? A. Yes.

Q. Who were the shift bosses under him at that time, if you remember? A. I think there was a man named Ridgeway, Clarence Ridgeway.

Q. Were there any others? A. That is the only one who is here now. Yes, there was one named Pomeroy.

Q. And he is no longer with the company? A. No, not at that shaft. He is at Sacramento.

Q. Is Mr. Ratteree still with the company? A. No, he is not. Mr. Ridgeway is, though.

J. W. Fisher—For National Labor Relations Board—Direct.

Q. You said you had a conference with the management. What individuals were present? A. Mr. Henrie, Captain Hodgson,—J. P. Hodgson.

Q. He was the General Superintendent? A. He was the General Manager at that time; Mr. Barkdoll.

Q. Any others? A. That is all.

Q. Those three and you and Mr. Ratteree? A. Yes.

Q. In other words, it was another case of where it was dangerous and inefficient to have men working in one place that couldn't get along; is that right? A. Very much.

Q. Isn't it the job of the shift boss to tell a man where to work today and just what jobs to do today? A. Yes, sir.

Q. And the man has to obey the shift boss's instructions, I suppose? A. Yes, sir.

Q. And if he didn't, I imagine he would be fired or transferred or something like that? A. Oh, not always.

Q. Just reprimanded? A. Yes, talked to, hired over again.

Q. Who tells the tool nipper where to go to get the drills that are being used? In other words, how does he know where each person is drilling? A. Well, the miners very often do that, and tell them they are short of stuff; shift bosses, also.

Q. In other words, there is no regular schedule handed to him that so-and-so will be working in this shaft today, so go to him and tell him where he will need the tools? A. Oh, I think there is always lots of tools in a place; it is only a case of transferring the dull stuff away and taking the sharp stuff in to them.

Q. About May 30th a man named Erik Wahlgren and another gentleman, J. L. Kimbrough were transferred to the Cole shaft on May 31st—this was in 1935—May 31st, T. A. Hightower and Austin W. Furr and Albert Boekman were transferred, and on June 1st Gabriel Villa was transferred. Now, do you know those man, or any of them? A. I knew all of them but the last one—— Who was that?

Q. Gabriel Villa. A. I don't know him.

Q. Do you remember whether you selected any of the first-named to be transferred? A. Of those five, I couldn't say that I did. I think most of them came—no, some of them came from the Campbell, and the others from the Junction. I may have, with the help of the foreman at that shaft.

Q. When did you first find out that most of the men in the Cole shaft were members of the Union? A. I didn't find out.

Q. Didn't you find out? A. I didn't ever say that I found out.

Q. Didn't you find out when the strike occurred whether most of them belonged? A. Yes, I found out then.

Q. And had you not known it at any time before? A. I had no way of knowing at that time that they were all union men because I was never furnished a list of union men or anything like that. You can think certain things, but for me to get up and say that I knew it wouldn't be so; I didn't know it.

Q. Well, did you know that those men that I last read were names of men, none of whom belonged to the Union? A. No, I didn't. There might be some of them that belonged, that I knew at that time.

Mr. Persinger: I believe that is all.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Do you wish this witness again on either side?

Mr. Kitchel: I think, in view of the line of testimony that has come out, that Mr. Fisher will very likely be called for the respondent.

Trial Examiner Kennedy: You are temporarily excused, Mr. Fisher, and you will not remain in the courtroom.

(Witness temporarily excused.)

George Frazee—For National Labor Relations Board—Direct.

GEORGE FRAZEE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: George Frazee.

Direct examination:

Q. (By Mr. Persinger) Mr. Frazee, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. March, 1934.

Trial Examiner Kennedy: Speak out now so everybody can hear you. '34, was that the date?

The Witness: Yes.

Q. (By Mr. Persinger) On what job were you employed? A. Mucker.

Q. And you worked how long? A. A little over a year.

Q. When did you stop work for the company? A. June 10, 1935.

Q. And just before June 10th, what job did you have? A. Miner.

Q. And did you go out on strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the first day you went on the picket line? A. June 10th.

Q. And do you remember the last day you were on the picket line? A. It was the last day of the strike.

Q. And were you on the picket line more or less continuously between June 10th and August 24th? A. Just about every day.

Q. Did any official of the company, during the time you were on the picket line, ask you to come back to work? A. Yes, sir.

Q. Who? A. Mr. Bateman.

Q. And when did he ask you? A. Well, two or three days after the strike started.

Q. And where were you? A. In the picket line.

Q. Yes, but where was the picket line? A. Up on the Junction, along the Junction Road there around the employment office.

Q. In the vicinity of the employment office? A. Yes, sir.

Q. And where was Mr. Bateman? A. Well, he was on the steps that leads into the employment office.

Q. And what did he say? A. He says, "If you boys don't go back to work tomorrow you will never work for the company again."

Q. Did you go back to work the next day? A. No, sir.

Q. Well, during the time that the strike was in progress, that is, between June 10th and August 24th, did you at any time apply for work with the company? A. No.

Q. Did you ever hear any other pickets apply for work? A. Yes, sir.

Q. When? A. Well, just before the strike was over.

Q. And where was it? A. In front of the empioyment office.

Q. And to whom did they apply? A. Mr. Bateman.

Q. Where was he? A. On the porch in front of the employment office.

Q. And were there any persons there who were not pickets? A. Oh, yes.

Q. What did Mr. Bateman say or do? A. Well, he came out there and he asked if there was any miners in the crowd, and nobody answered for a minute, and then Bill Day spoke up and said, "Sure, I'm a miner. How about my job back?"

And there were several of them spoke up, I don't know just who they were.

Q. Did you speak? A. No, I didn't, and he said——

Q. Who is "he"? A. Mr. Bateman. He says, "None of you fellows that went out on strike will ever be able to work for this company again."

Q. Was anything further said? A. Not to my knowledge.

Q. That is all you remember? A. Yes, sir.

Q. And since that time have you ever applied for work? A. No, sir.

Q. Why not? A. Well, that is the reason. They told us we would either go back to work or we couldn't work, and then he said, "Any of you boys that was out on strike can't go back," so I didn't see any use for us.

Mr. Persinger: I offer as Board's Exhibit next in order the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: What is the number?

The Reporter: No. 16.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 16.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 16.).

Mr. Persinger: Take the witness.

Cross-examination:

Q. (By Mr. Evans) You are not employed by the Company at the present time, Mr. Frazee? A. No, sir.

Q. You haven't been an employee of the company since June 10, 1935, have you? A. No.

Q. At the time you walked out on June 10, 1935, were you employed as a mucker or as a miner? A. As a miner.

Q. You were doing mucker's work, however, were you not? A. No, sir.

Q. What rate of pay were you getting? A. I was getting 62½ cents an hour.

George Frazee—For National Labor Relations Board—Cross.

Q. How much a day? A. $5.00.

Q. $5.00 a day? A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. Who are you working for? A. Shattuck Denn.

Q. How long have you been working for the Shattuck Denn? A. It will be year the 15th of this month—next month.

Trial Examiner Kennedy: A little louder, please.

The Witness: It will be a year the 15th of February.

Q. (By Mr. Evans) Since February 15, 1937? A. Yes, sir.

Q. What type of work are you doing there? A. Mining.

Q. How much pay are you receiving? A. $5.48.

Q. You are working full time, are you not? A. Yes, sir.

Q. And you have been continuously employed at the Shattuck Denn since February, 1937? A. Yes, sir.

Q. Where did you work before you worked at the Shattuck Denn? A. Gunnquely Coal Company at Rock Springs, Wyoming.

Q. What was the name of the company? A. Gunnquely.

Q. You might spell that, if you will. A. G u n n q u e l y.

Q. And what is the rest of the name? A. Coal Company.

Q. Coal Company? A. Yes.

Q. When did you—Where was that? A. In Hot Springs, Wyoming.

Q. When did you go to work for that company? A. Why?

Q. When? A. Well, I worked for them twice. I went to work for them in November, 1934.

Q. How long did you work for them at that time? A. About two months.

Q. Did you leave your employment there voluntarily? A. No, I got laid off.

Q. And then what did you do? A. I come back here.

Q. Did you receive any employment between the time you were laid off with that company and the time you went back to work with them again? A. Yes.

Q. For whom did you work? A. Oh, odd jobs. I worked on a few road projects.

Q. Whereabouts? A. Well, one of them out here at Elfrieda.

Q. How long did you work on those projects? A. About two months on this certain one.

Q. When did you go back to work with the coal company in Wyoming? A. The next October, 1936.

Q. In October of 1936? A. Yes.

Q. What type of work did you do when you went to work with the company in October of 1936; that is, the coal company? A. Mucking. They call them loaders there.

Q. Loading? A. Yes.

Q. Mining work? A. Just loading.

Q. What pay did you receive? A. $6.86.

Q. A day? A. Yes, sir.

Q. I don't quite recall when you said you left their employ the first time when you were laid off. A. I worked for them about two months.

Q. So that you were laid off there, then, in about December of '35? A. Well, close to the first of 1936.

Q. Close to the first of the year? A. Yes.

Q. From that time you engaged in various types of work around Cochise County? A. Yes, sir.

Q. Were you employed fairly continuously during that period until you went back to work for the coal company? A. No, sir.

Q. How much time all together did you work? A. I couldn't say for sure.

Q. Have you any idea as to rate of pay you received on the various jobs? A. I received the state scale driving a truck for the contractor.

George Frazee—For National Labor Relations Board—Cross.

Q. Driving a truck for the contractor? A. Yes.

Q. How much was that? A. 68¾, I believe.

Q. What? A. 68¾, I believe.

Q. 68¾ cents an hour? A. Yes, sir.

Q. How many hours would you work? A. Oh, about six hours a day.

Q. Did you ever work eight hours a day? A. Not very often.

Q. Did you at times? A. Once in a while. It was always deducted.

Q. What did you do from August 24th, 1935, until November, '35, when you went to work for the coal company? A. Well, I worked on relief a few months a few times.

Q. In Cochise County? A. Yes.

Q. How many days a week did you work there? A. Well, I don't think I can remember how much it was.

Q. Did you have any other jobs other than relief work during that period? A. No, sir.

Q. Now, at the time that you say you were on the picket line about August 21st, a few days before the strike, you were picketing at that time, were you not? A. Yes.

Q. The strike was still in progress, was it not? A. Yes.

Q. You had no intention of going back to work at that time, did you? A. If I could, I would have.

Q. The strike hadn't been called off, had it? A. We knew we lost.

Q. You knew you lost? A. Sure.

Q. Isn't it a fact, Mr. Frazee, that from time to time during the strike the pickets would congregate around at the employment office and in more or less of a razzing way ask about their jobs or their work? A. Not that I know of.

Q. Didn't they try to prevent employees from going to work? A. Only to speak to them.

Q. Didn't you speak to men in the rustling line? A. Spoke to them, yes.

Q. Did you say anything to them about your jobs? A. Certainly.

Q. You mentioned your jobs to Bateman from time to time when he would come out, would you not? A. I never did.

Q. You have heard others do it, however? A. I wouldn't say.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When you went to work for the Wyoming mine the first time, did you go there with the understanding that you were being permanently employed? A. Well, I didn't have an understanding.

Q. You did not? A. No, sir.

Q. What was your understanding? A. Well, I just asked for a job, and I got it.

Q. Was anything said about how long you would be there? A. No. They hire and lay off, as they call it, during the Wintertime. That's the only time we work—is in the Wintertime.

Q. The only time you work is in the Wintertime? A. Yes, sir.

Q. And you went back there the next Winter? A. Yes, sir.

Q. How long did you work that time? A. About the same amount of time.

Q. About two or three months? A. About two months.

Q. And you knew at that time that they only employed people in the Wintertime? A. Yes, sir.

Q. What are you doing over here at this Shattuck Denn Mine? A. Mining.

Q. Were you classified as a miner at the Phelps Dodge Mine when you left there? A. Yes, sir.

Q. You are getting $5.48 a day now? A. Yes, sir.

Q. If you had a choice between that job and the one that you had at the Phelps Dodge mine, which one would you take? A. I am trying to get my old position back.

Q. You would rather go back to Phelps Dodge? A. Yes.

Q. Would you rather go back at the rate of pay you earned at the time you left Phelps Dodge, than stay where you are now? A. Yes.

Trial Examiner Kennedy: You would.

That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: I have one more question.

Recross examination:

Q. (By Mr. Evans) Mr. Frazee, you were earning $5.00 a day when you walked out on June 10th? A. Yes, sir.

Q. You are earning $5.48 a day now? A. Yes, sir.

Q. You would rather go back to work for $5.00 a day, would you? A. I am only trying to get my old position back.

Q. I didn't ask you that. You would rather go back to work for Phelps Dodge at $5.00 a day, than to continue to work for Shattuck Denn at $5.48? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further, gentlemen?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you expect to call this witness again?

Mr. Persinger: No, I don't expect to.

Mr. Kitchel: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Mr. Persinger: Mr. Foley, will you take the stand, please.

John Patrick Foley—For National Labor Relations Board—Direct.

JOHN PATRICK FOLEY, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?
The Witness: John Patrick Foley.

Direct examination:

Q. (By Mr. Persinger) Mr. Foley, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. Well, I was employed in 1926 by the C & A Mining Company, and they merged in '31.

Q. You worked continuously—— A. To January 15, 1935.

Q. You worked continuously from '31 to January 15, '35? A. Yes sir.

Q. What was the occasion of your leaving the employ of the Company in January, '35? A. Well, I had no occasion to leave it, but the pressure was brought on me until I had a chance to go to work in California.

Q. You went to work in California? A. Yes, sir.

Q. When did you come back to Bisbee? A. I come back into Bisbee May 30, 1935.

Q. At that time did you attempt to get a job? A. Yes, sir.

Q. With Phelps Dodge? A. June 1st I rustled Murray Bateman.

Q. Where did you find him? A. In his office in Lowell, right out from the Junction mine.

Q. Anyone else present? A. No one present.

Q. What time of the day was it? A. About 10:00 o'clock; between 9:00 and 10:00 o'clock.

Q. What did Mr. Bateman have to say? A. I walked in and asked him, "What's the chance for a job?"

He said, "John, I'll look your record up and you come back Tuesday."

That makes it about the 4th of June.

Q. Did you go back Tuesday? A. I went back the same time, between 9:00 and 10:00 o'clock, Tuesday, and I asked him for a job, and he says no. I asked him, I said, "What does the record say, Mr. Bateman?"

He says, "John, as far as safety and working conditions are, your record is good, but," he says, "they have something against you."

Q. Did he tell you what that something was? A. He didn't say what it was. And I heard he was hiring men the following Friday.

He said that— I asked him would there be any chance to come back Friday, and he said, "John, you need not never come back here no more." He says, "I'm hiring men, but I won't want you."

Q. At that time did you belong to Local No. 30? A. Yes, sir.

Q. Were you ever on the picket line during the strike? A. I was on the picket line from the first day the strike was called until the last day.

Q. While you were on the picket line did you ever apply for work with the company? A. No. I come up on some of our boys there at the employment office about the 20th day of August, and I heard a debate going on there with Bateman and the boys, and through that I figured there was no job there for me.

Q. What did you hear actually said, and who said it? A. I heard Mr. Bateman talking to Mr. Day.

Mr. Bateman, at the time I come up there, Mr. Day said to Mr. Bateman, he said, "Who do you mean by 'them fellows'?"

He says, "I mean every one of you that come out on strike."

It was talking in regard to the work, and a fellow by the name of Coldwell spoke up and he said, "What's the chance of me going to work?"

He was also a striker.

And he says, "That means every one of you."

Q. How much longer did you stay there? A. I didn't stay there very much longer. They broke up and I left then.

Q. Have you applied for work since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 17, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received as Board's Exhibit No. 17.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 17.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Foley, are you an employee of Phelps Dodge Corporation at the present time? A. No, sir.

Q. Is it true that you have not been an employee of the Phelps Dodge Corporation at any time since January 15, 1935? A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn Mining Company.

Q. How long have you been working with the Shattuck Denn Mining Company? A. Since March of 1936.

Q. Do you remember what day in March you started to work there? A. I couldn't say for sure what day it was.

Q. What is your job at the Shattuck Denn Mining Company? A. Miner.

John Patrick Foley—For National Labor Relations Board—Cross.

Q. Have you been a miner continuously since March, 1936, for the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your present rate of pay? A. $5.48.

Q. Did you leave the district on January 15, 1935? A. Yes, sir.

Q. Where did you go? A. Mojave, California.

Q. Did you notify the Employment Department or anybody with the company that you were accepting new employment elsewhere? A. I asked for 30 days' furlough at that time, and I over-stayed my furlough.

Q. When did you actually get back, May 30, 1935? A. May 30, 1935.

Q. Did you ever send any notification to the company when you over-stayed your furlough that you were no longer an employee? A. No, sir.

Q. How did you come back on May 30, 1935? A. The job had all played out, and being that Bisbee be my home, why, naturally, that's the place I drift for.

Q. What was the job that you had in Mojave? A. As a miner working in the shaft.

Q. For what company? A. Soledad Mining Company.

Q. Were you laid off? A. The mine shut down.

Q. The mine shut down? A. Yes, sir.

Q. Are you an officer of the Bisbee Miners' Union, Local No. 30, at the present time? A. Yes, sir.

Q. What office do you hold? A. I am Secretary—Financial Secretary.

Q. Do you have in your possession the records of the union? A. No, sir. I have from the present day on remnants of the books of 1935—from 1933 on.

Q. What do you mean by "remnants"? A. Well, just what parts have not been misplaced.

Q. Do you have in your possession any record of a meeting held the evening of June 7, 1935? A. No, sir.

Q. What became of that record, do you know? A. I couldn't say.

Q. Do you have any record of the meeting held on June 8, 1935? A. No, sir.

Q. Do you have any membership records for the month of June and the month of July, 1935? A. Yes, sir. There's men on the books that were in the organization in June of 1935, but I wouldn't say they were all together.

Q. You are unable, though, to produce any record of any minutes of a meeting held on the evening of June 7, 1935? A. No, sir.

Q. You say that you applied for employment by talking to Mr. Bateman on June 1st, 1935, is that correct? A. Yes, sir.

Q. You also have testified, I believe, that you were in the picket line continuously from June 10, 1935, to August 24, 1935, is that right? A. Yes, sir.

Q. What employment did you have between the period beginning August 24, 1935, and the time you went to work for the Shattuck Denn Mining Company in March of 1936? A. Well, I got on relief during the strike of 1935, and just relief work until I went to work at the Shattuck Denn.

Q. You had no regular employment, then, between the time you returned from Mohave until you went to work for the Shattuck Denn Mining Company in 1936? A. Yes, sir.

Q. Did you make an effort to seek employment other than relief work? A. Yes, sir.

Q. Did you leave the district at any time? A. The only time I left the district was after Mr. Bateman had told me that there was nothing there for me, and I went to Tombstone looking for a job, and that's the only place I have been. I haven't been financially able to leave.

Q. Was it a surprise to you when Mr. Bateman said it was very likely that you could get a job in view of the fact that you had thrown up a job during the depression and

not notified the company that you were not coming back? A. Well, it did, to a certain extent. Pressure had been brought on me for three months before I left here. For the last month I worked for them they as much as told me that if I didn't do what was expected of me, why, to come and get it.

Q. Come and get what? A. Get my time.

Q. In other words, you were warned that you were not turning out enough work? A. I was doing the work, but it was imposed on me at all times that if I ever fell down on it to come and get it, that is the action they taken. The last shift I worked for them was the 14th of January, and I was told that night by the boss that "Fisher says 'Foley, any time you fail to get it, why, you had better come in the office.'"

Q. Well, isn't that true of every man if he doesn't put out a day's shift, that he will be told to come and get his time? A. Not necessarily.

Q. Well, isn't it customary if a man is not doing the proper amount of work to tell him that? A. They don't do it, but they have their right, I guess, to do something for them if he doesn't.

Q. Isn't it a fact that Mr. Bateman told you that your accident record was very poor when you came back from Mohave? A. It isn't.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: No questions.

Trial Examiner Kennedy: Do you wish this witness back?

Mr. Persinger: Yes, I do have one question, too.

Redirect examination:

Q. (By Mr. Persinger) How do working conditions at the Shattuck Denn Mine compare with those at the Copper Queen Mine? A. Working conditions?

Q. Yes, the condition of the air and the condition of the—that is, the dampness of the drifts and any other working conditions? A. Well, at one time, not a short ways back, the Denn was poor, conditions were poor for a man to work in there. It was pretty hot. And now they have a ventilation system in there that makes it pretty favorable, comparable with the Queen, I guess.

Q. In other words, the conditions are about the same, then? A. Just about the same.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Do you want this witness back?

Mr. Kitchel: We have no further questions.

Mr. Persinger: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

EDWARD BOWDEN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Edward Bowden.

Direct examination:

Q. (By Mr. Persinger) Mr. Bowden, were you formerly employed by the Phelps Dodge Corporation— A. Yes, sir.

Q. When did you first begin work for them? A. About 1920.

Q. And did you work continuously after that? A. No, sir, I was laid off at the Hill in '21, I believe, and I was reinstated in '22.

Q. Well, I don't want every off and on occurrence during the 20's. When did you first begin working continuously? A. Well, 1927.

Q. And from 1927 you worked continuously up until what time? A. Until the strike.

Q. And what was your job? A. Miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you a member of the union at the time of the strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the first day that you were on the picket line? A. The first day of the strike.

Q. And when was the last day? A. The last day of the strike.

Q. During the time that you were on the picket line, did you ever apply for work? A. No, sir.

Q. After the strike was over, did you ever apply for work? A. Yes, sir.

Q. When? A. In the middle of September, about the middle of September.

Q. Of 1935? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. And where did you find him? A. At his office.

Q. Anyone else there? A. No, sir.

Q. What time of day was it? A. About 10:00 o'clock in the morning.

Q. And what did you say? A. I just asked him if there was any chance for a job.

Q. What did he say? A. He said they hadn't made no disposition of my case, and I asked him if it would do me any good to rustle, and he said, "No, not until they make disposition of the case."

Q. Any further conversation? A. No, sir. I thanked him and went out.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 18 the employment record of this witness.

Trial Examiner Kennedy: Any objection of this offer?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 18.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 18.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) You are not employed by the Phelps Dodge Corporation at the present time? A. No, sir.

Q. You haven't been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. Are you employed at the present time, Mr. Bowden? A. Yes, sir.

Q. Who are you working for? A. Shattuck Denn.

Q. What is your occupation with Shattuck Denn? A. Timber man.

Q. What rate of pay does that carry? A. $5.76.

Q. $5.76? A. Yes, sir.

Q. The timber man's rate of pay is higher than that of a miner, is that right? A. Yes, sir.

Q. How long have you been working for Shattuck Denn? A. Since March, I believe.

Q. Since March of what year? A. This year, '37.

Q. March, 1937? A. Yes, sir.

Q. You don't know what time in March you went to work for them, I suppose? A. No, sir, I couldn't be exact.

Edward Bowden—For National Labor Relations Board—Cross.

Q. And you have worked for them continuously as a timber man since that time? A. Well, I started as a miner.

Q. You started as a miner? A. Yes, sir.

Q. And you are now working as a timber man? A. Yes, sir.

Q. When you walked out on June 10, 1935, you were employed by Phelps Dodge Corporation as a miner, were you not? A. Yes, sir.

Q. What rate of pay were you receiving at that time? A. $5.

Q. Did you receive any employment during the period from June 10, 1935, until, say, August 27, 1935? A. No—relief.

Q. You worked on relief? A. Yes, sir.

Q. When you say that you worked on relief, you mean that you were employed to work on what were commonly known as relief projects? A. Yes, sir.

Q. And during that period how many days a week did you work on relief? A. We got seven days a month, I believe.

Q. Seven days a month? A. Yes, sir.

Q. That is not true of all cases; that was in your case? A. My case, yes.

Q. Then did you—were you employed at any time between August 25, 1935, and March, 1937, when you worked for Shattuck Denn? A. Yes, sir.

Q. Who did you work for? A. I went to work for the Arizona Edison in, I believe, November.

Q. Arizona Edison Company? A. Yes, sir; 1936.

Q. In November of 1936? A. Yes, sir.

Q. Didn't you go to work for them in October of 1935? A. It could have been October, yes, sir.

Q. In other words, when you say November, you mean— A. About.

Q. —November, 1935? A. Yes, that is right; the year of the strike.

Q. And how long did you work for Arizona Edison? A. Well, the time I went to Shattuck Denn.

Q. Until you went to Shattuck Denn? A. Yes, sir.

Q. You worked for the Arizona Edison Company then continuously from about October, 1935, until you commenced your employment with the Denn? A. I was laid off for 10 days or two weeks in January of 1936, and then I went back to work for them.

Q. Then, with the exception of about 10 days in January of 1936, you were working for Arizona Edison Company? A. Yes, sir.

Q. Continuously until you went to work for Shattuck Denn? A. Yes, sir.

Q. And you have worked for Shattuck Denn continuously from that time to the present time? A. Yes, sir.

Q. What kind of work were you doing for the Arizona Edison Company? A. I was laborer, $4 a day.

Q. $4 a day? A. Yes, sir.

Q. And you worked the full week, did you? A. Six days, yes, sir, and then I went on a salary and got $3.66.

You worked 6 days a week at $4.00, and then went on at 7 days a week at $3.66 a day? A. That is, on a salary, yes, sir.

Q. On a salary? A. Yes, sir.

Q. You said you received a salary of $3.66 a day? A. Yes, sir.

Q. $110.00 a month, or equivalent to $3.66 a day? A. Yes, sir.

Q. You were put on a salary, then, by the Arizona Edison Company, of $110.00 a month? A. Yes, sir.

Q. And you worked 7 days a week? A. I was on call at all times.

Q. Did you change your type of work at all when you went on salary? A. Well, while I was working on the gas truck, and they decided to put me on a salary when I was on the gas truck.

Edward Bowden—For National Labor Relations Board—Recross.

Q. You have made no application for employment with the Phelps Dodge Corporation, then, since September, 1935? A. No, sir.

Q. After Mr. Bateman told you that no disposition had been made of your case, when you say you saw him in September of 1935, you didn't go back to see him at any time after that? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Q. (By Trial Examiner Kennedy) You were employed as a miner at the Phelps Dodge Corporation when you went on strike? A. Yes, sir.

Q. You were not discharged at all? A. No, sir.

Q. How much were you paid at that time? A. $5.00.

Q. $5.00 a day? A. Yes, sir——

Q. And you are now drawing how much? A. $5.76.

Q. $5.76 a day? A. Yes, s.

Q. Do you want your old job back? A. I want to be reinstated; yes.

Q. You would rather work at Phelps Dodge at $5.00 a day than at your present job at $5.76? A. I want my job back as a miner at Phelps Dodge.

Q. Would you take it back if it involved that reduction in pay? A. Yes, sir.

Trial Examiner Kennedy: That is all.

Re-cross-examination:

Q. (By Mr. Evans) You didn't go out on the walkout on June 10th, Mr. Foley? A. Yes, sir.

Q. Now, one other question, please: You have been outside of the courtroom, have you, this morning? You haven't been in the courtroom this morning? A. No, sir; I wasn't here this morning.

Q. However, a number of persons who have been in the courtroom have told you that the Trial Examiner asked them whether they would prefer to continue to work for Shattuck Denn or come back to work for Phelps Dodge, didn't they? A. Yes, sir.

Q. And they told you what their answers had been to that question, did they not? A. What they said; yes.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do either side want to question this witness any further?

Mr. Persinger: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Mr. Persinger: Could we take a short recess?

Trial Examiner Kennedy: We will take a 10-minute recess at this time.

(Short recess.)

Trial Examiner Kennedy: The hearing will be in session.

PAUL AMARO, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: Paul Amaro.

Direct examination:

Q. (By Mr. Persinger) Mr. Amaro, were you formerly employed by Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. I was employed about in March of 1934.

Q. And you worked continuously thereafter until what time? A. Until June 10, of 1935.

Q. At that time did you go out on strike? A. I did.

Q. Were you on the picket line during the strike? A. I was.

Q. What was the last day you were on the picket line? A. August 24, 1935.

Q. Is that the last day of the strike? A. Yes, sir.

Q. Since that time have you applied for work with the company? A. I have.

Q. When? A. Along about the first week of September, 1935.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. At the employment office.

Q. What time of day? A. It was about 10:00 o'clock.

Q. Was that in the outer office, or in Mr. Bateman's inner office? A. In the inner office.

Q. Was anyone present? A. No one but him.

Q. What did you say? A. I asked him if there was any chance for a miner. He said he could not consider a job for me or any other striking miner.

Q. Was anything further said? A. No, sir.

Q. Have you applied for work since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 19 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 19).

Mr. Persinger: Take the witness.

Cross-examination:

Q. (By Mr. Kitchel) Mr. Amaro, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed by anyone at the present time? A. Shattuck and Denn Mining Corporation.

Q. What is your job with them? A. Miner.

Q. When did you first go to work for them, Mr. Amaro? A. The first time I worked for the Shattuck and Denn was in 1929; or, do you mean after the strike?

Q. Well, I was particularly referring to after June 10, 1935. A. It was in June of 1936.

Q. Do you remember the date? A. I don't, exactly.

Q. Have you worked continuously for the Shattuck Denn Mining Company since June of 1936 until the present time? A. I have.

Q. Have you been employed as a miner with that company all that time? A. I have.

Q. What is your present rate of pay? A. My present rate of pay is $5.48.

Q. What was your rate of pay at the time you walked out on June 10th, 1935? A. $5.00.

Q. You say that you were in the picket line from June 10, 1935, to August 25, 1935, every day? A. Not every day.

Q. What were you doing the days that you weren't on the picket line? A. Stayed home and down town.

Q. Would you say that you were there most of the days during that period? A. Most of the time I was there; yes.

Q. Were you employed at all during that period? A. Only on relief.

Q. How many days a week? A. We were getting four days, I believe—is what I was getting a month.

Q. Four days a month? A. Six day—$24.00 a month, I was getting.

Q. After August 25, 1935, when the picket line was disestablished, what did you do? A. I stayed around here until I asked Mr. Bateman for a job, and after that I left for Kingman, Arizona.

Q. Did you get employment there? A. I did.

Q. For whom did you work? A. Boriana Mining Company.

Q. Approximately what date did you go to work for the Boariana Mining Company? A. It was about the second week or—I don't remember the date; it was about along the second week of September.

Q. Were you employed as a miner? A. I was.

Q. What was your rate of pay? A. $4.50.

Q. A day? A. Yes, sir.

Q. How many days a week did you work? A. 7 days.

Q. How many days a week were you working with the Phelps Dodge Corporation at the time you walked out? A. 5 days.

Q. How long did you continue with the Boriana Mining Company? A. I worked there continuously until about March of that same year.

Q. That would be March of the next year, would it not? You went to work in September of 1935, and then you left? A. '36; yes.

Q. March of '36. Did you leave them voluntarily? A. I did.

Q. What did you do between March of 1936 and June of 1936? A. I stayed around here looking for a job at the Shattuck Denn office.

Q. You had no work, then, in that period? A. I did not.

Q. Were you a member of the Bisbee Miners' Union, Local No. 30, in 1935? A. I was.

Q. In 1934? A. I was.

Q. Were you an active member? A. No.

Q. Did you attend the meetings regularly? A. Most of the time I attended them; yes.

Q. Did you attend any meetings of the Union during the week preceding the time of the walkout in 1935? A. I did.

Q. What meetings were they? Was there more than one? A. Well, I couldn't——

Mr. Persinger: If the Examiner please, I object upon the ground that it is not proper cross-examination.

Trial Examiner Kennedy: You confined your question, did you, to the meeting at which the strike vote was taken?

Mr. Kitchel: I merely asked him about meetings during the week prior to the strike. I had not confined myself to any particular meeting.

Trial Examiner Kennedy: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Kennedy: You may answer.

The Witness: I don't remember but the last meeting that we had prior to the strike.

Q. (By Mr. Kitchel) Do you remember what night of the week that was? A. On the 7th of June.

Q. Were you in attendance at that meeting? A. I was.

Q. Do you recall that the 7th of June was a Friday? A. It was Friday, June 7th.

Q. How many members of the Union were present at that meeting? A. I couldn't say; I don't know the exact number.

Q. You, yourself, were present, however? A. I was present.

Q. Could you estimate the number present? A. I haven't any idea at all of how many there was.

Q. Where was the meeting held? A. At the Union hall, on O. K. Street.

Q. How long did it last? A. I would say about six hours; between 5 and 6 hours.

Q. Was that the only meeting that you attended that week? A. I believe it was, to the best of my knowledge.

Q. Who presided over that meeting that you attended? A. Lee White was president at that time.

Q. Did he preside? A. Yes, sir.

Q. What was the business of the meeting? A. Well, it was to decide what to do in regards to the 8 men that they fired for Union activities.

Q. What was done? A. We called the strike vote.

Q. Did Mr. White preside throughout the meeting? A. I don't remember exactly if he did or not.

Q. How was the vote taken at that meeting, Mr. Amaro, on the question of whether or not a strike would be called? How did they vote? A. (Pause.)

Q. In other words, what was the method of voting on that proposition? A. I don't remember whether the fellows voted, or not.

Q. Was it a vote by showing of hands? A. I don't remember whether it was or not.

Q. Was there actually a strike vote that night? A. Sir?

Q. Was there actually a strike vote that night? A. There was that night.

Q. You are absolutely certain of that? A. On the 7th of June.

Q. But you are not certain about how the vote was taken? A. I am not certain about that.

Q. And you are not certain as to about how many men were there? A. I am not.

Q. And don't you know that Mr. Lee White was in Mexico that day? A. I don't remember.

Q. Did you vote? A. I did.

Q. How did you vote? A. I don't remember whether we signified by raising our hands, or whether we took a ballot on it.

Q. Did you know what you were voting for? A. I did.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: If the Examiner please, I move to strike the entire testimony relating to the strike vote, on the ground it is entirely immaterial.

Mr. Kitchel: Mr. Examiner, we are at a disadvantage here. There doesn't seem to be any record of this meeting. The only thing we can do is to try and find out what actually happened by examining these witnesses.

Trial Examiner Kennedy: What is the purpose of this line of questioning?

Mr. Kitchel: To find out if a strike vote was ever taken, and the cause for the strike. We contend there was no cause for the strike, as contained in the bylaws of the International constitution.

Mr. Persinger: If the Examiner please, I submit that it is not material whether a strike vote was taken. The strike was actually called, the pickets were established on Monday, June 10th, and a labor dispute actually existed at the time until August 24th. There is no dispute as to that.

Mr. Kitchel: Mr. Examiner, I think it raises a rather important question of law, since Mr. Day has testified that no demand was made on the company. He has further testified that no notice was ever given to the company, and testimony has been elicited and a stipulation has been entered into that no strike vote was called pursuant to the rules and regulations of the International.

Trial Examiner Kennedy: As to the picketing activity that we have had evidence of. Does the respondent contend that that is not Union activity?

Mr. Kitchel: No, we do not contend that for the first few days of the actual walkout.

Trial Examiner Kennedy: And there is testimony that the men have been refused reinstatement because of their striking and because of their picketing.

Mr. Kitchel: We do contend that that was not because of Union activities.

Trial Examiner Kennedy: I will leave the testimony in. I have some doubt as to its value.

Anything further of this witness?

Mr. Persinger: Nothing further.

Q. (By Trial Examiner Kennedy) You were employed as a miner at the Phelps Dodge? A. I was.

Q. When you left? A. I was.

Q. You were not discharged on June 10? A. I walked out.

Q. You walked out. Do you consider your present occupation with this company that you are now working for as desirable as working for Phelps Dodge under the conditions which you worked at the time you left your job on June 10, 1935? A. I do.

Q. You do? A. I didn't get that.

Trail Examiner Kennedy: Will you read the question, Mr. Reporter? If it is too involved I will reframe it.

(Thereupon the question was read by the Reporter as above set forth.)

The Witness: I want reinstatement at the Phelps Dodge.

Q. (By Trial Examiner Kennedy) You are not answering my question. Do you understand the question? A. It is not clear.

Q. Do you understand it? A. It is not clear yet.

Q. You, of course, understand the conditions under which you are now working? A. I do.

Q. And you have in mind the conditions under which you worked at Phelps Dodge? A. I do.

Q. Now, which do you consider preferable. A. I would rather go back for the Phelps Dodge.

Q. Would you rather go back if it involved a cut in pay to $5.00 a day? A. I will go under the present scale of wages.

Q. But if it was $5.00 a day, that is what you got when you left, isn't that correct? A. That is what I was getting when I left.

Q. If that is what you would go back at, would you go back? A. I would.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: May I ask one more question?

Trial Examiner Kennedy: Yes.

Recross examination:

Q. (By Mr. Kitchel) At what time of this year did you add you name to the list of the men in Appendix A of the Complaint, which includes the 48 men, one of whom is you? Just recently? A. I don't remember the exact date.

Q. At whose request did you do that? A. At the Union's request.

Q. Did you meet with Mr. Persinger? A. I did not, no before that.

Q. Approximately what date did the Union request you to add your name to this list? A. I don't remember the date

Q. Isn't it a fact that there is no difference in the working conditions at the Shattuck Denn and the Phelps Dodge? A. The working conditions?

Q. The conditions under which you work are the same are they not? A. Mining conditions are the same; yes.

Q. Rater of pay are the same, are they not? A. The same, as far as I know.

Q. And the amount of work you get in a week is the same? A. We get in 6 days a week. I don't know whether the Phelps Dodge works that many or not.

Mr. Kitchell: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: One more question.

Redirect examination:

Q. (By Mr. Persinger) Do you have to work six days a week? A. Well, that is their working schedule there.

Q. Six days? A. Six days a week.

Q. Is that a full day on Saturday? A. Sir?

Q. Is that a full shift on Saturday? A. Yes, sir.

Mr. Persinger: That is all.

Recross examination:

Q. (By Mr. Kitchel) Would you rather work six days a week than five days a week? A. Yes, I would rather work six days a week than I would five.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will either party wish to recall this witness?

Mr. Persinger: I think not.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

WILFORD DAVIS MORTENSON a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Wilford Davis Mortenson.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When did you first start work for them? A. In July, '29.

Q. And you worked how long? A. About——

Trial Examiner Kennedy: What year? Did you get the year there?

Mr. Persinger: 1929.

The Witness: About seven or eight months, I am not positive.

Q. (By Mr. Persinger) And what job did you have there? A. Mucker.

Q. When did you go back to work for the company? A. The 1st of April, 1934.

Q. And you worked how long? A. Until June, 1935. Until the time of the strike.

Q. And what job did you have in June, 1935? A. Miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. About how frequently were you on the picket line? A. Nearly every day.

Q. For how long? A. Until the strike was called off.

Q. Since the strike was called off, have you applied for reinstatement? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. Where.

Q. Yes. A. At the employment office.

Q. And about when was that? A. It was the last of November or the first of December.

Q. What time of day was it? A. It was along in the morning about 9:00 o'clock, I guess.

Trial Examiner Kennedy: That was in 1935, was it?

The Witness: Yes, sir.

Q. (By Mr. Persinger) Did you see Mr. Bateman in his inner office, or the outer office? A. In his general office.

Q. Was anyone present? A. No, sir.

Q. And what did you say to him? A. I asked Mr. Bateman if there was any chance of going back to work.

Q. What did he say? A. And he told me, he said, "Mortenson, if you want a job you will have to go to a union camp to get it." He says, "There is nothing in Bisbee for you."

Q. Anything further said? A. No, sir.

Q. Have you applied for work to Mr. Bateman since that time? A. No, sir.

Q. Have you applied to any official of the company for your job? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 20 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 20.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 20.)

Mr. Persinger: Take the witness.

Wilford Davis Mortenson—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Evans) You are not employed by the Phelps Dodge Corporation at the present time, are you, Mr. Mortenson? A. No, sir.

Q. You haven't been employed by the Phelps Dodge Corporation since June 10, 1935, have you? A. No, sir.

Q. By whom are you employed? A. Shattuck Denn.

Q. When did you go to work for Shattuck Denn? A. It was in August, '36—I believe—wait a minute—no, '37.

Q. Last August, or a year ago last August? A. A year ago last August; it would be '36, that is right.

Q. And you have worked for the Shattuck Denn Company since that time, have you not? A. Yes, sir.

Q. As a miner? A. Yes, sir.

Q. You received the rate of $5.40 a day—$5.48 a day? A. Well, at the time—part of the time I was getting more than that. I have been getting regular miner's pay.

Q. What was the maximum daily salary you received, or wage you received, from Shattuck Dean during the time you worked for them? A. $6.58 or $6.54, I believe it was; something like that.

Q. $6.54 a day? A. Yes, sir.

Q. And you are working on a six-day week basis, are you not? A. Yes, sir.

Q. At the time you left the employ of Phelps Dodge Corporation you were working on a five-day week basis? A. Yes, sir.

Q. And you were getting $5 a day? A. Yes, sir.

Q. You were employed as a miner by Phelps Dodge? A. Yes, sir.

Q. During the period from June 10, 1935, until August, 1936, when you went to work for Shattuck Denn, did you work for anyone else? A. Yes.

Q. Where? A. At the Gadsden Garage in Douglas.

Q. When did you go to work for the Gadsden Garage? A. It was along the latter part of October in '35.

Q. 1935? A. Yes, sir.

Q. Did you work at the Gadsden Garage continuously until you went to work at Shattuck Denn? A. Yes, sir.

Q. What did you do at the Gadsden Garage? A. Well, I was a service station attendant.

Q. How much pay did you receive? A. I was working mostly on commission?

Q. On a commission basis? A. Yes, sir.

Q. Your monthly income was around a hundred dollars a month? A. Right around there.

Q. You earned more than that during certain months? A. Well, a few months it would run $110, and some months as low as $90. It averaged about $100.

Q. And you state that during that period from October, 1935, to August, 1936, you were regularly employed at about $100 a month? A. Yes, sir.

Q. What were your earnings at Phelps Dodge Corporation, we will say, during the month of May, 1935? What would they average for the month? A. Well, I don't remember. I was working five days a week at $5 a day—would run about $25 a week.

Q. It would run somewhere around a hundred dollars a month, would it not? A. Or better; yes, sir.

Q. Why did you go out on strike, Mr. Mortenson? A. Well, mostly for discrimination against the union.

Q. Did you attend any union meeting during the week immediately preceding the date on which you walked out? A. Yes, sir.

Mr. Persinger: I object, Mr. Examiner, as not proper cross examination.

Trial Examiner Kennedy: I will leave the answer stay in.

Q. (By Mr. Evans) What date was that meeting held? A. Well, it was that Friday night, the night the strike was called.

Q. Where was it held? A. At the Union Hall.

Q. Who presided over it? A. Earl Morrison, I believe; I am not positive.

Q. Approximately how many members of the union were present? A. I know there was a quite a crowd.

Q. Did all of them work for the Phelps Dodge Corporation? A. No.

Q. There were a number who were not employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Would you say that 50 per cent of those present were not employed by the Phelps Dodge Corporation? A. No, not that many.

Q. What percentage, approximately? A. Around 10 per cent, at the most. You say not employed by the Dodge?

Q. Yes. A. Yes; less than 10 per cent.

Q. How many would you estimate were there? A. In my estimation, there would be about 125; between 100 and 125.

Q. Is that the only meeting you attended during that week? A. Yes, sir.

Q. You say you saw Mr. Bateman some time in November or December of 1935 about a job? A. Yes, sir.

Q. You were working at that time at the Gadsden Garage, were you not? A. I was.

Q. Do you remember what day of the week it was? A. No, I don't.

Q. How did you happen to go to see him about 9:00 o'clock in the morning? A. Well, I was working night shift at the garage and two fellows came by after me from Douglas that wanted to come up and see him, and we left Douglas around 7:00 o'clock that morning and came right on up.

Wilford Davis Mortenson—For National Labor Relations Board—Cross.

Q. As a matter of fact, applicants for jobs generally see Mr. Bateman some time between 7:00 and 9:00 in the morning, do they not? A. Yes.

Q. And you were very careful to get there at the time when there was no one else present, were you not? A. No, sir.

Mr. Persinger: I submit, Mr. Examiner, it is becoming argumentative.

Trial Examiner Kennedy: Proceed. I do not think that it is particularly objectionable.

Q. (By Mr. Evans) There was no one else present at that time? A. There was a man in the outer office in the lobby. There was quite a few of them.

Q. But there was no one in the room when you talked to Mr. Bateman? A. Not when I talked with him. He took them one at a time in there.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want to go back to the Phelps Dodge Company? A. Yes, sir.

Q. Why is it that you prefer going back there over staying with the Shattuck Denn? A. Well, it's just a better mine, better working conditions.

Q. In what way are the working conditions better? A. Well, they are better ventilated. The Shattuck Denn is a pretty hot place to work and gassy.

Q. You would even prefer to go back if you were getting $5 a day at the Phelps Dodge? A. I didn't quite understand that.

Q. If going back to Phelps Dodge meant that you would have to take a pay rate of $5 a day, would you still prefer going back to Phelps Dodge? A. No, sir.

Q. You would not? A. Not for $5 a day.

Trial Examiner Kennedy. I see. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: Is the witness going to be recalled?

Mr. Persinger: I think not.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

ANSON PERRY WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: Anson Perry Windsor.

Mr. Evans: Mr. Trial Examiner, I wonder if there would be any objection if we called Mr. Mortenson back for one question. We have no objection to this gentleman staying.

Trial Examiner Kennedy: Any objection?

Mr. Persinger: No objection.

Trial Examiner Kennedy: You had better leave the room.

Mr. Kitchel: We have no objection to his staying.

Trial Examiner Kennedy: Very well. You may stay.

(Witness temporarily excused.)

Wilford Davis Mortenson—For National Labor Relations Board—Cross.
Anson Perry Windsor—For National Labor Relations Board—Direct.

WILFORD DAVIS MORTENSON, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, further testified as follows:

Cross examination (continued):

Q. (By Mr. Evans) You were working at the Campbell Mine at the time of the walk-out on June 10, 1935? A. No.
Q. Where were you working? A. At the Junction.
Q. At the Junction Mine? A. Yes.

Mr. Evans: That is all.
Trial Examiner Kennedy: Anything further?
Mr. Persinger: Nothing further.
Trial Examiner Kennedy: You are excused.
(Witness excused.)
Trial Examiner Kennedy: All right, Mr. Windsor.

ANSON PERRY WINDSOR, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.
Q. When were you first employed by them? A. June 10th or 11th; I don't remember just the date, 1934.
Q. What was your job? A. Mucker.
Q. How long did you work for them? A. Well, until the strike. I was off on the sick list.
Q. When did you go on the sick list? A. Some time in March.

Q. When the strike was called you were on the sick list? A. Yes, sir.

Q. Were you being paid a salary while you were on the sick list, or receiving any pay? A. I was receiving insurance.

Q. Insurance? A. Yes.

Q. Is that from the company? A. Well, they have—I forget just what they call it.

Mr. Evans: Employment Benefit Association.

The Witness: Yes, sir.

Q. (By Mr. Persinger) Were you at any time on the picket line during the strike? A. Yes, sir.

Q. When were you first on the picket line? A. The first day.

Q. Were you on there frequently after that? A. Yes, sir.

Q. What was the last day you were on the picket line? A. Oh, I would say about just a little before the strike was called off.

Q. Since the strike have you applied for reinstatement? A. Yes, sir.

Q. When? A. It was around September; right at the last of October or the first of September; I couldn't remember the date.

Q. The last of September or the first of October? A. The last of August.

Q. The last of August, you mean? A. Yes.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. Mr. Bateman's office.

Q. What time of day was it? A. Oh, around—in the early morning at the rustling time, around 8:00 o'clock.

Q. Was anyone present? A. Oh, there was men there, but I don't know who they were. They were seeking employment.

Q. Did you see Mr. Bateman in the outer office or in his inner officer? A. I saw Mr. Bateman in his private office.

Q. Was anyone in that office. A. Not at the time I spoke to him.

Q. What did you say to him? A. I asked him, "How about a job?"

Q. What did he say? A. He told me that there wasn't nothing for me, or "any of my kind."

Q. Did you say anything? A. Well, I said to him, "Why?" He said that we took too an important part in the strike.

Q. Was anything further said? A. No.

Q. Have you applied since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 21 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Evans: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 21.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Do you know Hugh Schafer? A. Yes, sir.

Q. During the period between June 10th and August, 1935, you beat up on him, did you not? A. I had a fight.

Q. He was an employee of the company, was he not? A. Yes, sir.

Q. As a result of that you were arrested for assault? A. Yes, sir.

Q. You are not employed by Phelps Dodge Corporation at the present time? A. Not at the present time, no.

Anson Perry Windsor—For National Labor Relations Board—Cross.

Q. You have not been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. For whom are you working at present? A. Shattuck Denn.

Q. When did you go to work for Shattuck Denn? A. November 23, 1936, I believe.

Q. You have worked down there for Shattuck Denn Mining Company continuously since that time, have you not? A. Yes.

Q. What type of work are you doing at the Shattuck Denn? A. I am running a slusher.

Q. What rate of pay do you receive? A. $5.48.

Q. You are classified as a miner? A. Yes, sir.

Q. You were classified as a mucker when you left the employ of Phelps Dodge Corporation, were you not? A. Yes, sir.

Q. What rate of pay did you receive as a mucker? A. $4.40.

Q. $4.40? A. Yes, sir.

Q. You were working five days a week, were you, prior to June 10, 1935? A. Forty hours a week.

Q. And you have been working on a six-day basis with the Shattuck Denn? A. Yes, sir.

Q. Between June 10, 1935, and October, I believe you said it was, 1936, or November, 1936—— A. November, if you are referring to when I went to work.

Q. That is right. A. At Shattuck Denn.

Q. Between June 10, 1935, and November, 1936, did you have any employment? A. I went to work for Pleasant & Hasler, contractor on this road out here at Fort Huachuca.

Q. You worked on the Fort Huachuca Road? A. Yes.

Q. When did you go to work for Pleasant-Hasler? A. Some time in November, or around the first of December; I couldn't say.

Q. Of the year 1935? A. Yes, sir.

Anson Perry Windsor—For National Labor Relations Board—Cross.

Q. And how long did you work for Pleasant-Hasler? A. I don't know; I can't say when I was laid off. The job finished. It was around nine months I worked for them.

Q. You worked for them approximately up to the time you went to work for Shattuck Denn, is that correct? A. Up to the time before I went to work.

Q. Two or three months before you went to work for Shattuck Denn? A. Something like that.

Q. And what type of work were you doing for Pleasant-Hasler? A. Well, I was laborer, truck driver, oiler.

Q. What rate of pay did you receive? A. $4, $5, and $.75 an hour, eight hours.

Q. $.75 cents an hour for eight hours? A. Yes, sir.

Q. And did you receive that during all the time you worked for them? A. No, I received $4 a day part of the time.

Q. How many days a week did you work? A. Forty hours a week.

Q. Forty hours a week? A. Yes.

Q. That is five days? A. Yes, sir.

Q. Now, prior to the time you went to work for Pleasant-Hasler, did you have any employment? A. No, sir.

Q. Did you work on relief? A. Let's see—I think I worked one month on the Golf Course on the W. P. A.

Q. What month was that? A. That was—well, after the strike—I left here and went to California and when I came back I went to—I worked one month on that, just before I went to work for Pleasant-Hasler.

Q. Did you attempt to find any employment while you were in California? A. Yes, sir.

Q. The last—strike that. When did you go off on the sick list, Mr. Windsor? A. It was a week or two after the strike was called.

Q. When did you first become ill and cease working? A. It was in March; I couldn't say the date.

Q. March of the year 1935? A. Yes, sir.

Q. So that you were not working then from March, 1935, until a week or two after June 10, 1935? A. No.

Q. And you were released for work then some time around June 21, 1935? A. Yes, sir.

Trial Examiner Kennedy: Speak up and answer for the record.

The Witness: Yes, sir.

Q. (By Mr. Evans) You never reported for work after you were released for work? A. No, sir, I didn't feel like I was able.

Q. Well, you are not released for work until you are able to work, are you? A. In some cases, I would say.

Q. Well, when did you first become able to work, Mr. Windsor? A. Well, when I was on the picket line I was limping around on my foot.

Q. And it wasn't until you went to work for Pleasant-Hasler that you were able to work? A. I wouldn't say that.

Q. Well, how long were you disabled after you were released? A. Well, let's see. About a month after the strike was called.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What pay are you now receiving at Shattuck Denn? A. $5.48.

Q. And you got $4.40 when you left Phelps Dodge? A. For the same work I am doing now.

Q. Do you want to go back to Phelps Dodge? A. Yes, sir.

Q. Would you go back at $4.40? A. Well, the rate of pay that they pay——

Q. No, at $4.40, would you go back? A. Yes.

Q. Give up your $5.48 and go over there and take $4.40? A. Yes, sir.

Trial Examiner Kennedy: That is all.

Recross examination:

Q. (By Mr. Evans) You would prefer to go back to work with Phelps Dodge Corporation at $4.40 a day on a five-day basis rather than continue to work for Shattuck Denn at $5.40 a day and on a six-day basis, is that correct? A. Yes, sir.

Q. Why? A. Because we have got a chance to organize the P. D., if we go back.

Q. You wouldn't figure on doing much work for Phelps Dodge while you were organizing, would you? A. You can work and talk to the men all at the same time.

Q. You figure on talking to the men while you are working, however? A. Well, you can see them on the street and talk to them.

Q. Well, you can see them on the street now, can't you? A. It don't do no good.

Trial Examiner Kennedy: Let's hold down the levity a little bit, please.

Q. (By Mr. Evans) You mean by that you would be able to force the men now working for Phelps Dodge Corporation to join the union?

Mr. Persinger: I move, before the question is completed, that it is improper.

Trial Examiner Kennedy: Let's have the complete question and then we will rule on it. Had you finished your question?

Mr. Evans: I will rephrase it.

Trial Examiner Kennedy: Very well.

Q. (By Mr. Evans) You mean by that, that you wouldn't be able to influence the men on the job while working, to join the union unless you were down there working with them?

Trial Examiner Kennedy: Now, do you object?

Mr. Persinger: Yes, I think the question is still improper.

Trial Examiner Kennedy: Overruled. You may answer.

The Witness: Well, I don't just understand what you mean.

Q. (By Mr. Evans) I mean by that, that if you were working next to a man on the job you can force him to join the union, can't you?

Mr. Persinger: I object to that.

Trial Examiner Kennedy: Overruled.

The Witness: You can talk to the man.

Q. (By Mr. Evans) And you can do a good many different things in talking to him, can't you? A. You don't have to force them. You can talk to them and tell them your ideas.

Q. And you wouldn't expect to do very much work while you were engaged in that conversation, would you? A. Well, that is noon hour, there is noon hour that you eat lunch.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Emery Adelbert Curtis—For National Labor Relations Board—Direct.

EMERY ADELBERT CURTIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Emery Adelbert Curtis.

Direct examination:

Q. (By Mr. Persinger) Mr. Curtis, were you formerly employed by the Phelps Dodge Corporation? A. Was I formerly?

Q. Yes. A. Yes, sir.

Q. How long did you work for them? A. From the time they merged until the strike.

Q. Had you worked for the C. & A. prior to the merger? A. Yes, sir.

Q. How long did you work for the C. & A.? A. I think from '25.

Q. And from the merger up to the time of the strike did you work continuously with no lay-offs? A. Yes, sir.

Q. What was your job? A. Powder man.

Q. At about the time of the strike? A. Yes, sir.

Q. What job did you start out at? A. With the Phelps Dodge?

Q. Yes, at the time of the merger what were you doing then? A. I think I went on the belt.

Q. What pay does the powder man receive, the same as a miner? A. Yes, sir.

Q. Did you go out on strike, June 10, 1935? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. It was the 13th or 14th of August.

Q. And how did it happen that you were not on the picket line after that? A. I had a chance to go and see the Coast, free trip, so I went.

Q. What time did you get back? A. We got back about the last of August.

Q. After you got back, did you apply for work from the company? A. No, sir.

Q. Why not? A. Because all the other boys had been turned down, and I didn't think there was any use of me trying it.

Q. Did you have any sons who were on the picket line? A. Yes, sir.

Q. Had they worked for the company and gone out on strike? A. At the time of the strike, I don't think he was working.

Q. Just one? A. I have one son, and he didn't work at all, just one.

Q. But people you knew had applied and they told you they had been turned down? A. Oh, yes.

Q. And you have never applied at any time? A. Never have.

Mr. Persinger: I offer as Board's Exhibit 22 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 22.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 22.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) How old are you, Mr. Curtis? A. I am 56 at the present time.

Emery Adelbert Curtis—For National Labor Relations Board—Cross.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. Am I an employee of the Phelps Dodge at the present time?

Q. Yes. A. No.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed by anyone at the present time? A. W. P. A., P. W. A.

Q. Have you been employed on any other work other than relief since June 10, 1935? A. I done about one week's work in Warren since then.

Q. At Warren, Arizona? A. Yes, sir.

Q. What work was that, please? A. Oh, a—on a man's lot down there.

Q. What was your pay for that job? A. He gave me $4 a day.

Q. When was that, Mr. Curtis? A. Well, I just can't say. I think it was last June. It was real hot. I don't know exactly what month it was.

Q. It was June, 1937? A. Yes.

Q. Have you been on relief work then except for that week? A. Yes, sir.

Q. All this period of time? A. Yes, sir.

Q. And you say that you—that you have never made personal application for employment? A. No, sir.

Q. Was it your thought that if the company wanted your services they would come and get you? A. Yes.

Q. You felt that Mr. Bateman would look you up and ask you to return to your work? A. No, I didn't think he would do that.

Q. You made no effort, though, to find out? A. No, I never.

Q. (Continuing) Whether you personally could go to work for the company? A. No.

Q. Have you applied any place else for work? A. No, sir.

William Daugherty—For National Labor Relations Board—Direct.

Q. You haven't tried to get a job anywhere except on relief? A. No, sir. That is all. I haven't left the town at all.

Mr. Kitchel: I see.

Q. (By Mr. Kitchel) Did you ever apply for work at the Shattuck Denn? A. No. I was a little old was the reason I didn't do such a thing.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you want your job back at the Phelps Dodge?

The Witness: Yes, I will take it back.

Trial Examiner Kennedy: Anything else?

Mr. Persinger: Nothing else.

Q. (By Mr. Evans) May I ask you: You say you would take it back without applying for it? A. Without applying for it?

Q. Yes. A. If I thought I could get it, I would.

Mr. Evans: That is all.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

WILLIAM DAUGHERTY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: William Daugherty.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation, Mr. Daugherty? A. Yes, sir.

William Daugherty—For National Labor Relations Board—Direct.

Q. When were you first employed? A. 1925, I believe.

Q. Were you employed at the time of the merger with C. & A.? A. I can't remember.

Q. How long was your last—strike that.

When was your last stretch of employment with Phelps Dodge terminated? A. I think I worked a couple of months in 1934.

Q. You have not been employed since 1934? A. No.

Q. Since—strike that.

Were you in town at the time of the strike? A. Yes, I was.

Q. Were you on the picket line? A. No.

Q. You were not on the picket line? A. No.

Q. Since the strike have you ever made application for work? A. Yes, sir.

Q. With the company? A. Yes, I have.

Q. When? A. I applied for work in the month of January.

Q. What year? A. 1937.

Q. That was last year? A. Yes.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see Mr. Bateman? A. In his office.

Q. What time of day was it? A. About 8:30 or 9:00 in the morning.

Q. Did you see him in his outer office or inner office? A. Oh, I seen him in a little place where it was between an office where he had a bunch of men sitting around waiting for jobs, that he had already hired, I believe.

Q. And what did you say to him? A. I asked him if there was any chance for me looking for work.

Q. What did he say? A. Well, he thought for a while, and he says, "If there is an opening over at the Cole I will send you over there."

Q. Anything further said at that time? A. No.

Q. What did you do? A. Well, I came back and rustled a couple more days.

Q. And did you speak to Mr. Bateman again any of those later days? A. No.

Q. Did you see him again at any time? A. No, I didn't —only when he hired me; yes.

Q. When did he hire you? A. He hired me on or about the 15th of January.

Q. A few days after you first applied to him for work? A. Yes, two or three days after.

Q. Two or three days? A. Yes, sir.

Q. And where were you when he hired you? A. I was standing out in the crowd.

Q. Was that inside the office, or outside? A. Outside.

Q. Where was Mr. Bateman? A. He was standing out on the porch.

Q. And what did he do? A. He called off some names.

Q. Was yours among them? A. Yes.

Q. And what did you do then? A. Went inside the office and sat down where I told you before.

Q. And then Mr. Bateman spoke to you after that? A. No, he just—not until he called me into his office.

Q. And when he called you in his office, was anyone else there? A. Mr. Belindas, I believe.

Q. What was said when you went into his office? A. He didn't say anything. He told me to sit down in the chair.

Q. Did you sit down? A. Yes.

Q. What was said then? A. He got a card out and got the card and told me to go back to the doctor's office.

Q. Is the doctor's office close to the Employment Office? A. The next room.

Q. Did you take your card and go into the doctor's office? A. I didn't take it; he took it.

Q. He took it? A. Yes.

Q. What happened when you went to the doctor's office? A. Well, I went back there and sat down and waited for my turn to get examined.

William Daugherty—For National Labor Relations Board—Direct.

Q. Were you examined by the doctor? A. Yes.

Q. What happened after your examination? A. When I came back out Mr. Bateman gave me a slip to bring up to the dispensary.

Q. Did you take the slip to the dispensary? A. Yes.

Q. What did you do with it when you got to the dispensary? A. I gave it to Mr. Smith.

Q. What was the point of taking the slip to the dispensary? A. To get my lungs X-rayed.

Q. To have the X-ray taken? A. Yes.

Q. And did you have the X-ray taken? A. Yes.

Q. And then what? A. He told me to go around to the Employment Office the next morning at 9:00 o'clock.

Q. Did you go back to the Employment office at 9:00 o'clock the next morning? A. Yes.

Q. Whom did you see? A. Mr. Bateman.

Q. Was anyone there besides the two of you? A. That's all; just Mr. Bateman.

Q. What did you say? A. He called me into his office and he said "Dangherty, I can't send you up there." "There was some men down to see me and they said you called them 'scabs', and I don't want no trouble up there."

Q. What did you say? A. I walked out.

Q. Have you been back since? A. I went back a couple of days later.

Q. Whom did you see that time? A. Mr. Bateman.

Q. Where did you see him then? A. In his office.

Q. Was anybody else there? A. No.

Q. What was said? A. I asked him who the men were that said I called them 'scabs.'

Q. What did Mr. Bateman say? A. He says, "I don't think I have to tell you that."

Q. Was anything further said? A. Well, I explained to him that I wasn't on the picket line, and then he said, "There's no use for you coming here for any more work."

Q. Was anything further said? A. That was all.

Q. Have you been back since? A. No.

Mr. Persinger: I offer as Board's Exhibit No. 23, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 23.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Mr. Daugherty, were you first employed by the Phelps Dodge Corporation in the year 1924? A. It may have been; yes.

Q. Do you recall, Mr. Daugherty, that you worked from September 25, 1924, to July 30, 1925, for the Phelps Dodge Corporation? A. Yes.

Q. And you then left the service of the Company. Why? A. I just quit.

Q. Where did you go then? A. Stayed here.

Q. Don't you recall going to Miami at that time? A. I can't remember.

Q. When did you go back to work for the Company? A. I can't remember when I did.

Q. Do you recall that you returned to work for the Company on August 22, 1925, and worked until August 4, 1925, and then again left the service of the company voluntarily? A. I can't remember.

Q. Do you recall that you were employed again on January 30, 1926, and that you were discharged on April 8, 1926? A. I can't remember.

William Daugherty—For National Labor Relations Board—Cross.

Q. You don't recall ever having been discharged by the Company? A. I may have been discharged; yes.

Q. Do you recall that you were re-employed on August 11, 1928; that you worked until September 4, 1928; and that you again left the employ of the company voluntarily? A. It might be right.

Q. Have you worked for the Phelps Dodge Company since October 15, 1934? A. No, I haven't.

Q. Did you have some trouble with your eye at that time? A. Yes.

Q. Where were you from the period October 15, 1934, until around June, 1935? A. In Bisbee.

Q. You were in the district the entire time? A. Yes.

Q. Were you a member of Bisbee Miners' Union No. 30 at that time? A. Well, I wasn't paid up.

Q. Did you attend meetings? A. No, I didn't.

Q. Did you attend meetings just prior to the walkout? A. The only meeting I attended is the night I joined.

Q. Was that in 1935? A. I can't remember.

Q. You stated that you were not in the picket line at any time? A. No.

Q. I believe you have testified that your first application for employment was on January 15, 1937? A. Yes; on or about that time.

Q. Isn't it true that you were hired and then rejected by the examining physician? A. It is not.

Q. You state that you were not rejected by the examining physician? A. No, no.

Q. Mr. Daugherty, is it the usual practice that before a man is hired he is given a physical examination? A. Yes.

Q. Have you had any employment since you last worked for the company which was October 15, 1934? A. W. P. A.

Q. You have had no employment other than relief work? A. No.

Q. Were you an employee of the company on June 10, 1935? A. No.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the Union? A. I don't remember when I did join the Union.

Q. Do you know what year it was in? A. It must have been 1934.

Q. You attended one meeting, at which you were initiated? A. Yes.

Q. And you did not go to any other meetings after that? A. No.

Q. Have you ever been to a meeting since? A. No.

Q. And you took no part in the strike? A. No.

Q. What makes you think you have been denied employment because of Union activity? A. Because Mr. Batemen told me that I called somebody "scabs."

Q. Because you called a man a "scab"? A. Some men "scabs."

Trial Examiner Kennedy: That is all.

Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Could we have a 5-minute recess?

Trial Examiner Kennedy: A 5-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Abedin.

TOM ABEDIN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Tom Abedin.

Direct examination:

Q. (By Mr. Persinger) Mr. Abedin, have you been formerly employed by the Phelps Dodge Corporation? A. I worked for the C&A since 1918 until 1923.

Q. Were you working for the C&A at the time they merged with the Phelps Dodge Corporation? A. Yes, sir.

Q. Have you worked continuously for Phelps Dodge since the merger? A. I worked—What did you say?

Q. Continuously, without any layoffs, since '31? A. I got laid off on the 31st.

Q. 31st of what? A. '31; 1931.

Q. 1931? A. 1931.

Q. When did you go back to work? A. And then I was off about 6 months—I was off about three months, and then they hired me back again.

Q. Was that layoff in 1931 the last layoff you had? A. No, sir. In 1932 they hired me back again, and I worked about 6 months, and then they laid me off again.

Q. When did you go back after that? A. 1934.

Q. 1934? A. Yes, sir.

Q. Do you remember what month? A. The 12th of February.

Q. How long did you work at that time? A. I worked until the strike.

Q. Did you go out on strike? A. Yes, sir.

Q. At the time of the strike, were you a member of the Union? A. I was a member of the Union.

Q. Were you on the picket line during the strike? A. During every day.

Q. What is the last day you were on the picket line? A. It was about the 22nd of August.

Q. Previously, when you had been laid off, had the Company ever called you back without your actually applying? A. Never did.

Q. And they never sent you a letter? A. Yes; they did send me a letter on the 12th—12th of February. I got the letter here.

Q. Do you have that here? A. I have the letter here (producing letter).

Mr. Persinger: I offer as Board's Exhibit next in order a letter dated February 10, 1934, purported to be signed by Mr. Bateman.

Mr. Kitchel: May we see it, counsel?

(The letter referred to was passed to counsel.)

Mr. Evans: Are you offering this in evidence?

Mr. Persinger: Yes. So far as I know, it is legitimate.

Mr. Evans: We object to it upon the ground it is incompetent, irrelevant and immaterial. Apparently it represents a letter written by Mr. Bateman to Mr. Abedin in 1934, to the effect that if he would come back and take an examination he would be employed.

Mr. Persinger: It merely shows, Mr. Examiner, that the Company has, at least on one occasion, written to a man to come back after a layoff without his actually applying.

Trial Examiner Kennedy: Do you question the authenticity of the letter?

Mr. Evans: No. I think the signature is correct.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit next in order.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 24.)

Q. (By Mr. Persinger) Referring back to the time of the strike, Mr. Abedin, did any person employed by the company—— A. Any person employed by the Company?

Q. Wait a minute. (Continuing)—any person employed by the Company ever advise you that you could not return to work? This was while the strike was going on and while you were picketing; during that period. A. Yes Several told me I couldn't go to work for the company no more.

Q. Who told you? A. Huh?

Q. Who told you? A. Oh, several guys; I couldn't remember their names.

Q. Do you remember the names of anyone? A. No, sir; I don't.

Q. After the strike was over, did you ever apply for work with the Company? A. 1936 I seen Mr. Bateman on the street and I asked him about a job.

Q. What did he say? A. He says, "No showing for us guys no more."

Q. Was anything else said? A. That is all.

Q. Why did you wait so long before applying for reinstatement? A. Just because I seen several friends of mine that had been going over there, and they had said there was no use for us, so I just didn't go.

Q. Have you applied at any time since you met Mr. Bateman on the street? A. No, I haven't.

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Have you discussed your testimony in this case with anyone, Mr. Abedin? A. No, I never.

Q. You haven't talked over with anyone at all what you were going to testify to in this case? A. No, I never have.

Q. With no other member of the Union? A. The Union?

Q. Yes. A. No.

Q. Have you attended any meeting with other members of the Union? A. Yes, I did.

Q. Who are involved in this case? A. No,—on this case; no.

Q. You haven't discussed with anyone what your testimony was to consist of today? A. No, not until today.

Q. Or you haven't discussed it at any time? A. No, no time on this case; no.

Q. How did you happen to bring that letter from Mr. Bateman with you? A. Well, I thought I might need it here, and I couldn't talk very good English, so I thought I would represent this letter.

Trial Examiner Kennedy: Just a moment. Will you read that answer, Mr. Reporter:

(Answer read.)

Q. By Mr. Evans: And you didn't show that letter to anyone before you came up here? A. No, I didn't.

Q. You didn't show it to anyone before you came into the courtroom? A. Exactly.

Q. Didn't you show it to Mr. Persinger? A. Yes, I showed it to Mr. Persinger.

Q. When did you show it to Mr. Persinger? A. Yesterday.

Q. Well, then, you attended a meeting yesterday, did you? A. Yesterday I attended a meeting.

Q. And there were other members of the Union present at that meeting? A. All the members; yes.

Q. And this case was discussed at that time? A. Yes; they were talking about this case.

Q. And was there any discussion as to what your testimony was going to be in this case at that time? A. No; just questioned me a few questions and that is all there was to it.

Q. And you were told, were you not, that in the event the question should be asked you as to why you didn't apply

for employment prior to 1936, that you should say that others had applied and told you that there wasn't any chance? A. The others told me there was no chance with the company.

Q. I know, but yesterday at that meeting that you attended, wasn't that told you, that that should be your answer? A. No, I don't think he said that.

Q. Did anybody ever tell you to say that? A. No.

Q. Have you discussed with anyone what—Have you discussed with anyone why you didn't apply for employment prior to 1936? A. No, I didn't.

Q. You have not discussed that with anyone? A. No, no one.

Q. You didn't discuss that at the meeting yesterday? A. No, sir.

Q. Was yesterday, at that meeting, the first time that you attended any meeting at which these cases were discussed? A. No; we had been meeting every once in a while, every couple of weeks.

Q. Why did you go out on strike, Mr. Abedin? A. Well, because I belong to the Union and they called the strike, and I go out.

Q. That is the only reason you know why you went out on strike? A. Yes, sir.

Q. When was the first time you knew that you were going out on strike? A. I belonged to the union since 1933.

Q. When was the first time that you knew you were going out on strike on Monday, June 10, 1935? A. I know June 7th we took a vote.

Q. Where did you take that vote? A. In the Union hall.

Q. How did you happen to be there? A. I attended the meeting.

Q. That was on a Friday? A. I believe so.

Q. Did you usually have union meetings on Friday? A. I could not tell you the Fridays or Saturdays. They changed it every once in a while.

Q. You don't know whether the meeting that you attended was on a Friday or a Saturday? A. No, I don't; I couldn't say.

Q. Did anyone tell you to come to that meeting? A. Yes; they told me.

Q. Who told you? A. All the boys on the street told me there was going to be a meeting.

Q. What time of day was that meeting? A. I couldn't say; I don't remember.

Q. Was it in the morning? A. No, it was in the evening.

Q. About what time did it start? A. I could not remember.

Q. How long did it last? A. Oh, I guess two or three hours.

Q. Who presided at the meeting? A. Mr. Lee White.

Q. Mr. Lee White was there? A. He was our president at that time.

Q. And he was there and presided, at the meeting? A. Yes.

Q. Mr. White was at the meeting, was he? A. Yes, he was there—no, I couldn't tell you whether he was there or not, but we got notice from him,—we got orders from him.

Q. You got orders from him? A. Yes.

Q. What were those orders? A. We were to have a meeting that night.

Q. How did you know you got the orders from Mr. White? A. Well, the boys told me that the orders come from Mr. White, that we were to have a meeting.

Q. And you don't know whether Mr. White was at the meeting or not, then? A. I couldn't remember for sure.

Q. What happened at the meeting? A. Well, we just took a strike vote.

Q. That is all you did? A. That is all.

Q. Did you discuss why you were having a strike vote? A. I didn't stay very long; just vote to strike and I go out.

Q. Then, how long were you at the meeting? A. I couldn't say; maybe half an hour, an hour.

Q. I thought you said the meeting lasted two or three hours? A. Well, the boys told me the meeting lasted that long.

Q. But you were only there about a half an hour or an hour? A. About half an hour.

Q. And what did you do while you were there? A. We just took a vote, a strike vote; I didn't hang around there any more.

Q. How do you take a strike vote? A. Just take a vote, sir, for the strike.

Q. And did you vote? A. Yes.

Q. What did you do to vote? A. Huh?

Q. What did you do when you voted? A. Just voted; that is all.

Q. How did you vote? A. Just voted on a piece of paper, wrote on a piece of paper, and it was put in the box.

Q. Oh; you wrote on a piece of paper and put it in a box? A. Yes.

Q. What else did you write on that paper? A. Just my name.

Q. That is all? A. That is all.

Q. That is all you wrote on that paper, your own name? A. No; we put on a cross.

Q. Oh, you put a cross on? Where did you put the cross, Mr. Abedin? A. I couldn't say, on that paper; I couldn't remember where.

Q. Was it a blank piece of paper? A. I couldn't say.

Q. You don't know what was on it? A. No.

Q. But you wrote your name on it? A. Yes, sir.

Q. And put a cross on it? A. Yes. They took the names first and then we closed this paper and put it in a box.

Q. Can you read, Mr. Abedin? A. Not very well.

Q. How did you know where to put your name on that piece of paper? A. It tells us there, the paper tells you there where to put your name.

Q. You could read that all right? A. Yes.

Q. How did you know where to put your cross? A. It tells you there the same way.

Q. You were able to read that all right? A. Yes, I could read that much.

Q. As I understand it—Have you worked any place else since—— A. (Interrupting) Worked for leasors every once in a while, or part of the time.

Q. And where was the first place you worked since August, 1935, do you remember? A. At the Boras Mine.

Q. At the Boars Mine? A. Yes, sir.

Q. That is in the vicinity of Bisbee, is it not? A. Yes, sir.

Q. And when did you go to work for the Boras Mine, Mr. Abedin? A. In the Boras—I have been at the Boras three months now.

Q. Oh, you have been working at the Boras for three months? A. Just part of the time; maybe two weeks at a time.

Q. You haven't been working there regularly, then? A. No.

Q. Now, this is January. Then you probably went to work for the Boras about November, 1937? A. Yes, about that time.

Q. And what was the nature of the work you had been doing at the Boras? A. Mining.

Q. What do you get in the way of pay? A. $5.50 a day.

Q. Now, did you work any place prior to going to work at the Boras? A. No—W. P. A.

Q. Oh, W. P. A.? A. Yes.

Q. So that W. P. A. work, then, is the only work that you have done since August of 1935, up to the time you went to work for the Boras, is that correct? A. Exactly.

Q. You have worked for no one else? A. I have worked for Mr. McKenna, a short time; not quite two months; Jim McKenna.

Q. You worked for Jim McKenna on the McKenna lease? A. Yes, sir.

Q. And about when was that, Mr. Abedin? A. I think it was about in March sometime.

Q. In March of 1937? A. Yes, sir.

Q. And you worked for a few months for Jim McKenna? A. Yes, sir.

Q. And you worked as a miner, did you? A. Yes, sir.

Q. What rate of pay did you receive there? A. When I first went there, $5.50, and then he raised it up to $6.00 a day.

Q. You are working at the Boras at the present time? A. No, I haven't been working for two weeks now, and I am supposed to go back to work on the 2nd.

Q. You say you are supposed to go back to work on the 2nd? A. Next month.

Q. February? A. Yes, sir.

Q. Now, did you work for anyone other than Mr. McKenna and the Boras? A. No, I never.

Q. Did you leave Mr. McKenna's employment voluntarily? Did you quit? A. No. He left about 15 men at the time I laid off.

Q. Oh, he laid off about 15 men at that time? A. Yes.

Q. On this W. P. A. work that you have done from time to time, did you at any time work regularly, steadily? A. On W. P. A.?

Q. Yes. A. No; we just worked on W. P. A. 11 days a month.

Q. 11 days a month? A. Yes.

Q. And that is on various projects around the district? A. Yes, sir.

Q. You haven't worked on any of the road construction jobs? A. No; we just pave these roads here.

Q. You didn't work on the Fort Huachucha Road? A. No, I never.

Q. Now, the only time that you saw Mr. Bateman, then, was on the street in Lowell sometime in 1936? A. Yes, sir.

Q. And was that during the day or in the evening? A. In the evening.

Q. After supper? A. Something like that. After supper, I think it was.

Q. Do you remember about what time in 1936 that was? A. January, I believe it was.

Q. About January, 1936? A. About January.

Q. That is the only time that you have made any application for employment, was the time that you saw Bateman on the street? A. That is the only time.

Q. You have never called at his office? A. No.

Q. Did you ever attempt to get work at the Shattuck Denn? A. Yes, I did.

Q. And you weren't able to get a job there? A. No. They hired me one time, and they turned me down on kidney trouble, the doctor.

Q. The examining physician turned you down on account of kidney trouble? A. Yes, sir.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Any thing further?

Redirect examination:

Q. (By Mr. Persinger) How long ago was that that you were turned down for kidney trouble? A. That was in '36.

Q. What part of '36? A. October.

Q. October, of '36? A. Yes.

Q. And where are you working now? A. In the Boras Mine. I am not working now, but I will be on the 2nd.

Tom Abedin—For National Labor Relations Board—Redirect.

Q. Did you have to take a medical examination to get in the Boras Mine? A. No, you don't have to be examined when working for leasors.

Mr. Persinger: That is all.

Q. (By Trial Examiner Kennedy) You say you are working part time at the Boras Mine? A. Part of the time; yes.

Q. How much time do you put in out there a month? A. Well, it depends on how big orders they get from the company; how many railroad cars; sometimes he gets 8 or 9, and then we finish that and lay off.

Q. You mean 8 or 9 days a month? A. 8 or 9 cars, railroad cars.

Q. How much time does that amout to a month? A. Sometimes we work two weeks, and sometimes 20 and sometimes 25 days.

Q. What job did you have at the Phelps Dodge when you went out on strike? A. Miner.

Q. Miner? A. Yes, sir.

Q. Were you employed regularly there at that time? A. Yes.

Q. And how much did you earn? A. $5.00.

Q. $5.00 a day? A. Yes.

Q. Now, there is some conflict in your testimony about your coming in here with this letter. As I understood it, you first testified that you had not discussed that letter with anybody, and later you stated that you had. How do you explain that? A. Well, I just got—I just couldn't understand very well, and I just don't know what I was saying, I guess.

Q. Do you mean to say that you have discussed that letter with someone before you came in? A. Yes, that letter.

Tom Abedin—For National Labor Relations Board—Cross—Redirect.

Q. How long have you been in this country? A. Since 1912.

Trial Examiner Kennedy: 1912. That is all. Anything further?

Mr. Evans: Mr. Trial Examiner, may I ask two more questions?

Trial Examiner Kennedy: Yes.

Cross examination (continued):

Q. (By Mr. Evans) At what mine were you working, Mr. Abedin, at the time you walked out on June 10, 1935? A. The Campbell shaft.

Q. You were working at the Campbell? A. Yes.

Q. Before you got this letter from Mr. Bateman, you had seen Mr. Fisher about going back to work, had you? A. Yes, I saw Mr. Fisher. I couldn't tell you how long before Mr. Bateman sent me that letter.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I think I might clarify one thing.

Redirect examination:

Q. (By Mr. Persinger) At this meeting yesterday, Mr. Abedin, what part did you actually take in the meeting? What did you say? A. What did I say?

Q. Yes. A. I didn't say hardly anything. I just was there.

Q. Did you ask any questions? A. About this case?

Q. Didn't you sit in front of me in a chair and answer my questions? A. Yes, I did.

Q. And that was all you did? A. That's all.

Q. And you showed me the letter? A. Yes.

Q. And that is all that was said about the letter; you just showed it to me? A. That's all.

Q. So that actually there was no discussion of your testimony or the letter; you answered my questions and you showed me the letter? A. That was all there was to it. You only wanted to see the letter, too.

Mr. Persinger: That is all.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Mr. Windsor.

GROVER D. WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Grover D. Windsor.

Direct examination:

Q. (By Mr. Persinger) Mr. Windsor, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When did you go to work for them? A. I went to work the 8th of June, '34.

Q. And you worked how long? A. One year.

Q. What job did you start in at? A. Mucker.

Q. What job did you have in June of '35? A. Running a muck machine.

Q. What rate of pay did you receive for running a mucking machine? A. $5.24.

Q. Were you a member of the Union in June of '34? A. Yes.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Grover D. Windsor—For National Labor Relations Board—Cross.

Q. When was the first day you were on the picket line? A. The first day of the strike, the 10th of June.

Q. When was the last day? A. The 26th of June.

Q. Since the strike have you at any time applied for reinstatement? A. Yes, sir.

Q. When? A. Somewhere along the 1st of November of '35.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. In his office.

Q. What time of day was it? A. I would say it was right around 9:30 or 10:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. Was anybody else there? A. I don't believe so.

Q. What did you say? A. I asked Mr. Bateman for a job.

Q. What did he say? A. He said, "A hundred years after the next War, I'll give you a job."

Q. Was anything further said? A. No, sir.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 25, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 25.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Mr. Windsor, are you the brother of A. P. Windsor, who has recently testified in this case? A. Yes, sir.

Grover D. Windsor—For National Labor Relations Board—Cross.

Q. Are you employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Denn Mining Company.

Q. Shattuck Denn Mining Company? A. Shattuck Denn.

Q. Are you working at the present time? A. No, sir.

Q. Are you off on disability? A. Yes, sir.

Q. What happened to you? A. I broke my hand.

Q. While working? A. Yes, sir.

Q. How long have you been working for the Shattuck Denn Mining Company? A. Since November, '36.

Q. What has been your job with the Shattuck Denn? A. I started out as mucker, running a muck machine.

Q. What is your rate of pay? A. $5.76.

Q. What was the highest rate you received since you went to work with them? A. $6.84.

Q. $6.84? A. Yes.

Q. This may have been a mistake, Mr. Windsor, but you testified that in June, '35, you were working as a mucker for the Phelps Dodge Corporation?

Mr. Persinger: I think the testimony was mucking-machine operator.

The Witness: Yes.

Q. (By Mr. Kitchel) Did I understand you to say that your rate was $5.24 at that time? A. Yes, sir.

Q. Prior to the time when you went to work for the Shattuck Denn Mining Company in November, I believe you testified of November, 1936, did you have any other employment? A. I worked at Hasler's.

Q. For the Pleasant-Hasler Construction Company? A. Yes, sir.

Q. When did you go to work for them? A. Somewhere around the 1st of December, '36.

Q. December, '36? A. '35, I guess.

Q. The 1st of December, 1935? A. Yes.

Q. How long did you work for them? A. Up until May.

Q. From December 1, 1935, to May, 1936? A. Yes.

Q. What was your job with the Pleasant-Hasler Construction Company? A. I was working on the bridge gang.

Q. Whereabouts? A. At the Huachuca,—Fort Huachuca Road.

Q. What was your rate of pay on that job? A. $4.00 a day.

Q. How many days a week did you work? A. Well, 6 days—5 days. I started at 6 days, and I think they cut down to 5 days along the last.

Q. You continued at the same rate of pay all the way through? A. Yes, sir.

Q. Prior to December 1, 1935, did you have any other employment? A. No, just unemployed.

Q. What did you do between the period of June 10, 1935, until December, 1935? A. I worked on relief.

Q. How many days a week would you get work on relief? A. Well, it amounted to $24 a month.

Q. You had no other employment during that period? A. No.

Q. Did you state the date in November, 1935, when you talked to Mr. Bateman? A. No, I didn't.

Q. Do you recall the date? A. No, I couldn't recall the day; somewhere along the first of November.

Q. Do you recall the day of the week? A. No, I couldn't say that.

Q. Was it a regular rustling day or hiring day? A. I don't know that, either. It may have been a rustling day, but I was there after rustling hours.

Q. Were there others there at the time to see him? A. No, there was not.

Q. You were the only one? A. Yes, sir.

Grover D. Windsor—For National Labor Relations Board—Redirect.

Q. Was anybody standing outside? A. I didn't see anybody.

Q. What was it that he said again? A. "A hundred years after the next war, I'll give you a job."

Q. You are sure he said that? A. Yes, sir.

Q. Were you on the picket line every day during the strike? A. Well, up until the 26th of June.

Q. Was that the time when the picket line was disestablished? A. No, sir.

Q. You said the 26th of June? A. Yes.

Q. And you weren't in the picket line at any time after that? A. No, sir.

Q. Where were you? A. Up here in jail.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Is there any difference between the present job with the Shattuck Denn and the job that you had with Phelps Dodge? A. In the rate of pay, you mean?

Q. Yes. A. Yes.

Q. What is the difference in the rate of pay? A. Well, I was making $5.24 when I left the Phelps Dodge, and I am making $5.76 now.

Q. You are making $5.76 now. Are the conditions of employment any different? A. I don't think so.

Trial Examiner Kennedy: That is all.

Mr. Persinger: Just a moment.

Redirect examination:

Q. (By Mr. Persinger) What job do you have at Shattuck Denn now? A. Running a Finley; a mucking machine.

Q. Do you know what that pays now at Phelps Dodge? A. No, I don't. I guess it is the same.

Mr. Persinger: That is all.

Mr. Kitchel: I have just one more question to clarify some of your testimony.

Recross examination:

Q. (By Mr. Kitchel) Were you arrested on the charge of assaulting Larry Kuder? A. Yes, sir.

Q. Was he an employee of the Phelps Dodge Corporation? A. He was hired that morning.

Q. What morning? A. The 26th of June.

Mr. Kitchel: That is all.

Redirect examination:

Q. (By Mr. Persinger) Did you hit Larry Kuder? A. No, I did not.

Mr. Persinger: Nothing more.

Recross examination:

Q. (By Mr. Kitchel) Were you present at the time the fight occurred? A. I was there.

Q. Who else was present? A. Jack Cornett, Joe Woods, Monte Reed.

Q. Isn't it a fact that Kuder was quite severely injured at that time? A. At the testimony, yes. I don't know how badly he was injured.

Q. Did you jump on him when he was down? A. I did not.

Q. Did you mix up in that fight in any way? A. I did not.

Q. What actually happened?

Mr. Persinger: If the Examiner please——

The Witness: It is a long story.

Trial Examiner Kennedy: Just a moment.

Mr. Persinger: I think this is going pretty far afield.

Trial Examiner Kennedy: I beg your pardon?

Mr. Persinger: I think this is going pretty far afield.

Trial Examiner Kennedy: What is the purpose of this inquiry?

Mr. Kitchel: Naturally, there has been a lot of hostile feeling during the strike and, as has been brought out by the testimony, there were several charges of assaulting employees, which hostile feeling has not disappeared at this time. We also have a right to know the type of man we are dealing with when we are being told we have to put him back to work.

Mr. Persinger: If the Examiner please, respondent obviously knows the type of man. He worked for him long enough, and he has been in the community long enough, and as for evidence of assaults, there is evidence so far that one man during an entire strike, which lasted from June 10th to August 24th, was assaulted.

Trial Examiner Kennedy: Is it the contention of the respondent that they are refusing to hire these men because of a fight?

Mr. Kitchel: No. We are trying to bring out, for the purpose of the record, the type of man that we are dealing with, and also the strike picture.

Trial Examiner Kennedy: I do not see the materiality of it. I will sustain the objection.

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Do you think we have time for one more?

Trial Examiner Kennedy: Yes, I think so.

Mr. Persinger: Mr. Dunkerson.

JOE HENRY DUNKERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Joe Henry Dunkerson.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. When they merged.

Q. Had you worked for C. & A. before the merger? A. I did.

Q. And since the merger had you worked continuously up to the strike, or had you been laid off? A. Since the strike, I worked on W. P. A. since then.

Q. Wait a minute. The merger was about 1931. A. Oh. I worked continuously until the strike.

Q. You worked continuously from '31 to June, '35? A. Yes.

Q. What job did you have? A. I was tool nipper.

Q. When did you become a tool nipper? A. Well, I did quite a lot of that. I would say four or five years. I was transferred from the shops underground when they merged, and I was tool nipper for a long time.

Q. In June, 1935, did you go out on strike? A. I did.

Q. Were you a member of the union at that time? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day that you were on the picket line? A. Well, I couldn't say for sure, but it was up near the last. I would say two or three days at least before we called off the strike.

Q. During the period of the strike were you on the picket line frequently? A. Quite often.

Q. Since the strike have you applied for reinstatement at any time? A. I have.

Q. When? A. Well, I couldn't give no definite time at that, but shortly after the strike.

Q. A matter of days after the strike? A. What?

Q. It was a matter of several days after the strike? A. Well, I couldn't—it wasn't so very many, but I couldn't be definite about that at all.

Q. To whom did you apply? A. Bateman.

Q. Where did you find him? A. I found him in his office.

Q. What time of day was it? A. Well, I would say 9:00; 8:30 or 9:00 o'clock.

Q Was anyone else present? A. I couldn't say there was.

Q. What was said? A. I just asked him, "What is the chance for a job?" He said, "None."

To my best remember, he said they hadn't done nothing about the strikers yet. That is the best of my memory of what he said.

Q. Was anything further said? A. No.

Q. Have you applied since that time? A. No, sir; I have not.

Mr. Persinger: I offer as Board's Exhibit No. 26 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 26.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) You are not employed by Phelps Dodge Corporation at the present time, Mr. Dunkerson? A. No, sir.

Q. You have not been an employee of Phelps Dodge Corporation since June 10, 1935? A. I have not.

Q. Have you worked any place since June 10, 1935, other than on W. P. A.? A. Yes. I worked in Idaho; Sunshine Mines, two months even.

Q. At the Sunshine Mines in Idaho? A. Yes, sir.

Q. And when did you start to work there? A. Started June 13th.

Q. June when? A. The 13th.

Q. What year? A. '36.

Q. What kind of work did you do there? A. Worked in the steel shop.

Q. And you say you worked there two months? A. Two months.

Q. Continuously? A. Yes, sir.

Q. What rate of pay did you receive at the steel shop? A. Well, I taken sharpener's place for about two weeks. That was $6.50.

Q. $6.50 a day? A. Yes, sir.

Q. And how many days a week did you work? A. We worked every day there.

Q. Seven days a week? A. Yes, sir.

Q. Did you receive $6.50 a day while you were there? A. No, I think I worked 13 shifts while he was gone.

Q. Then after he came back what did you receive? A. I worked five and a quarter—I got $5.25, and that was the helper's pay.

Joe Henry Dunkerson—For National Labor Relations Board—Cross.

Q. You received $5.25 a day? A. Yes, sir.

Q. What rate did a tool nipper receive in June, 1935, working for the Phelps Dodge? A. Well, 55 cents an hour; I believe it was. It was mucker's wages, anyway.

Q. Mucker's wages? A. Yes.

Q. About $4.44 was the mucker's rate, wasn't it? A. Something like that.

Q. Or $4.40? A. $4.40, I believe.

Q. A day? A. Yes, sir.

Q. Now, did you work for anyone else other than the Sunshine Mines? A. No, I didn't.

Q. Have you ever worked over at the Banner Mine at Lordsburg? A. No, sir, I haven't. I got a job there, but I taken the flu and I never did get to go to work.

Q. You say you got a job at Banner? A. I got a job there, but I was taken sick with flu and they never did call me again.

Q. When did you get that job at the Banner Mine? A. That was a year ago last Christmas.

Q. That would be Christmas of 1936? A. '37—yes, '36.

Q. Was it after you had worked at Sunshine? A. Yes, sir.

Q. And what kind of a job did you get over at Banner? A. I was supposed to get a toplander job.

Q. What rate of pay did that job pay? A. Regular mucker's pay, $40, I believe, was what they were paying there.

Q. But you became ill and didn't work there? A. Yes, sir.

Q. Did you work there at all? A. No, not a bit. Never was examined for the job, even.

Q. Did you ever try going back to the Banner? A. No, sir.

Q. Never went back and re-applied for employment? A. No, sir.

Joe Henry Dunkerson—For National Labor Relations Board—Cross.

Q. Why did you leave the Sunshine Mine? A. Well, I asked him if there would be any chance of sticking around and getting my family out there, and he said they wouldn't be any hopes of that, because, you see, they were putting this jackbit in the mine and he didn't know how it was going to be with the steel sharpener.

Q. You had asked them whether you had a permanent position there? A. That is what I meant by it, sure.

Q. And they said they couldn't assure you of any permanent position, and, therefore, you left them? A. Yes, sir.

Q. However, you worked steadily for two months up to the time you left? A. Yes, sir.

Q. They didn't tell you that your work was temporary there, did they? A. No, they didn't, not exactly that way. But when they give me permanent enough work to send for my family I didn't know how to take that.

Q. In other words, he couldn't assure you that your job would be permanent? A. No, because they were putting in those jackbits and he didn't know whether there would be enough for a helper in there when these jackbits was made; that is what he was referring to.

Q. Have you attempted to obtain work at the Shattuck Denn? A. I put in an application for a steel sharpening job or helper in shops there.

Q. When did you put in that application? A. Well, I couldn't be sure about when that was, some time this last Spring, though.

Q. You haven't been employed by the Shattuck Denn, have you? A. No, I haven't.

Q. Would you be willing to work underground at the present time? A. For what place?

Joe Henry Dunkerson—For National Labor Relations Board—Cross.

Q. Underground mine job, mucking job? A. Yes, sir, I would, for the right amount of pay. I am working on P. W. A.; be glad to have a job with better pay.

Q. Then from June 10, 1935, until June 13, 1936, when you went to work at Sunshine, you had no work other than P. W. A. work? A. No, sir, I haven't.

Q. How many days were you working on P. W. A. during that period? A. Well, I don't know just how many days we had. Just had a certain amount to work out, but some was 11 shifts, and some is, you know, some is 8 and 9, it is according to what rate, of course, I was on the 11 shift.

Q. Eleven shifts a month? A. A month.

Q. And how much were you receiving? A. $44.

Q. $44 a month? A. Yes.

Q. Aside from the time you saw Mr. Bateman shortly after the strike which you have referred to, you have made no other applications for employment? A. I have not.

Q. With Phelps Dodge Corporation? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will be in recess until 9:00 o'clock tomorrow morning.

(Whereupon, at 4:50 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., Tuesday, February 1, 1938.)

Proceedings.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION.

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

ROOM 2
COCHISE COUNTY COURT HOUSE
BISBEE, ARIZONA
TUESDAY, FEBRUARY 1, 1938

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.
Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of the Phelps Dodge Corporation, Respondent.

PROCEEDINGS.

Trial Examiner Kennedy: The hearing will be in session.

Vernon Dell Curtis—For National Labor Relations Board—Direct.

Mr. Kitchel: Mr. Trial Examiner, counsel have agreed to stipulate that in the case of Emery A. Curtis, who testified yesterday, that Mr. Curtis worked for the Phoenix-Tempe Stone Company at the rate of $4 a day for seven days a week in the Fall of 1935 for the period of one month, and was then laid off.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: Which Curtis is that?

Mr. Kitchel: E. A. Curtis.

Trial Examiner Kennedy: E. A. Curtis.

Call the next witness.

Mr. Persinger: Mr. Vernon Curtis.

VERNON DELL CURTIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Vernon Dell Curtis.

Direct examination:

Q. (By Mr. Persinger) Mr. Curtis, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Were you employed by the Phelps Dodge Corporation in June of 1935? A. No, sir.

Q. What was the last date prior to June, 1935, that you were employed by the company? A. I was discharged on June 14, 1934.

Q. What reason was given you for that discharge? A. When I came on graveyard shift the night foreman at the Junction mine told me that we was going to dissolve partnerships.

Q. Did he explain anything further than that? A. No.

Q. That was approximateyl a year before the strike? A. Yes, sir.

Vernon Dell Curtis—For National Labor Relations Board—Direct.

Q. Since you were discharged have you applied for work with the company? A. Yes, sir.

Q. How many times? A. The first time was, I'll say, a month after I was discharged. I tried to get on——

Q. Wait a minute. I just want the times now. What was the next time after that? A. It was after the strike in the Fall, I'll say, November or October.

Q. And have you applied since that time? A. In Lowell one day, yes; not at the employment office.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. What was the first day you were on the picket line? A. The first day the strike was called.

Q. What was the last day? A. Well, I wouldn't say for sure, but it was right at the last of the strike.

Q. And what was the first occasion after the strike that you applied for work? A. I asked Mr. Bateman for a job.

Q. Wait a minute. When was that, now? A. In '36—'35, the fall of '35.

Q. Do you remember what month? A. It was in the fall; I would say November or October.

Q. And where did you see Mr. Bateman? A. In his office.

Q. What time of day was it? A. It was in the forenoon.

Q. Was anyone else present? A. No.

Q. And was this in Mr. Bateman's inner office? A. In his employment office.

Q. I understand there are two offices, the outer office for reception, and then his own personal office. Which one were you in? A. The first one; I guess that is the reception office.

Q. The outer office. What did you say to Mr. Bateman? A. I asked him, "How's the chance to go to work? It's pretty tough bucking relief." He said, "There's no chance of the likes of you to get a foothold in this camp again."

Q. Anything further said at that time? A. No, I left.

Q. And when was the next time you applied? A. It was in the summer of '36.

Q. And where? A. In a—well, you might call it a sporting joint in Lowell; they have a ticker tape down there that was receiving the outcomes of the Major League baseball scores, and we were all there getting them, and I asked him for a job.

Q. Well, now, who was "him"? A. Mr. Bateman.

Q. Who else was present? A. Well, there was different fellows there.

Q. Do you remember the names of any of them? A. Well, Frank Stone, he was the proprietor; that is, he was working in the place.

Q. Anyone else that you remember by name? A. That is the only one.

Q. And what time of day was this? A. In the evening.

Q. And did Mr. Bateman reply to you? A. He says, "In 300 years we will give you fellows a job again."

Q. Anything further said? A. No.

Mr. Persinger: I offer as Board's Exhibit No. 27, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 27.)

Cross examination:

Q. (By Mr. Kitchel): Mr. Curtis, are you an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you ever been an employee of the Phelps Dodge Corporation since June 15, 1934? A. No, sir.

Vernon Dell Curtis—For National Labor Relations Board—Cross:

Q. And it is true, is it not, that you were discharged on that date? A. I didn't understand you.

Q. It is true, is it not, that you were discharged on June 15, 1934? A. Well, I thought it was the 14th.

Q. Well, the 14th or 15th? A. Yes, sir.

Q. Of June, 1934? A. Yes, sir.

Q. For whom were you working at the time of the walk-out on June 10, 1935? A. I was working for Uncle Sam, on the relief.

Q. Were you employed at all during the period from June 14, 1934, until June 10, 1935, other than on relief work? A. No, sir.

Q. And from the period June 10, 1935, until the present time, have you received any employment other than relief? A. It was in November some day I went to work for Phoenix-Tempe Stone Company and I worked until some date in February or March.

Q. That was in November of 1935? A. Yes, sir.

Q. You worked until some date in February or March, 1936? A. Yes, sir.

Q. Correct. What was your job with the Phoenix-Tempe Stone Company? A. I was what you call a "mud man" on a rock-laying job.

Q. What was your rate of pay? A. Five bucks a day.

Q. Did you work seven days a week? A. No, sir; five days a week.

Q. Five days a week? A. Forty hours a week, to be stretched out some way.

Q. What was the reason for your quitting that job in March of 1936? A. We finished—completed the job. The construction camp moved out.

Q. You finished the job. What was your next employment following that, Mr. Curtis? A. I worked two weeks at Pleasant & Hasler Construction Company driving a truck.

Q. Was that on the Fort Huachucha Road? A. Yes, sir.

Q. How soon after you left the Phoenix-Tempe Stone Company did you go with Pleasant & Hasler Construction Company? A. Not more than two weeks.

Q. How long did you say you worked for Pleasant & Hasler? A. Around two weeks; maybe into the third week.

Q. What was your job with them, did you say? A. Driving a truck.

Q. What was your rate of pay? A. A ton and a half truck is 62½ cents, and I was driving a 5-ton. I think it was 68 or 70 cents an hour.

Q. How many hours a day? A. Six.

Q. How many days a week? A. Well, some days we would work two days—some weeks we would work two days, and sometimes we would work seven.

Q. It varied during that two-week period you were with them? A. Yes, sir.

Q. How many days would you say you worked for that outfit during that two-week period? A. Well, I'll say a day and a half or three days.

Q. All but a day and a half or three days out of the 14? A. Yes, sir.

Q. Was that job completed? Is that why you left them? A. The fellow that I was working for took his trucks and left this part of the state. That automatically released me.

Q. What was your next job following that? A. I went to work for the Shattuck Denn January 13, 1937.

Q. You had no employment between the time you left Pleasant & Hasler, which would be in March or April of 1936, until January 13, 1937? A. No, sir; other than relief.

Q. What job did you start on with Shattuck Denn? A. I was in the bull gang.

Q. What was your rate of pay? A. Mucker's pay.

Q. And that was how much at that time? A. $4.84.

Q. $4.84 a day? A. Yes.

Q. How many days a week were you working? A. 7.

Vernon Dell Curtis—For National Labor Relations Board—Redirect.

Q. Are you employed at the present time by the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your job at the present time? A. I am powder man.

Q. What is your rate of pay now? A. Miner's pay.

Q. And that is $5.48? A. $5.48.

Mr. Kitchel: That is all.

Mr. Persinger: Just a moment. I have two more questions.

Redirect examination:

Q. (By Mr. Persinger) At the time of the strike and after the strike, did you belong to the Union? A. Yes, sir.

Q. And what—— A. Wait just a moment. When I was—— When I got out of work I belonged to the Union in this way: That we was allowed unemployment stamps in our book.

Q. That kept you in good standing? A. Yes, sir.

Q. What was your last job with Phelps Dodge? A. Motorman.

Q. What was the rate of pay on that? A. Well, it's two bits a day more than miners make, I think.

Q. In other words, about $5.24 or $5.25? A. Yes, sir.

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the Union? A. I was a charter member.

Q. Well, when was that? A. September the—same date in September, 1933.

Q. Have you been a member continuously since that time? A. Yes, sir.

Q. Have you ever held any office in the Union? A. I have been on the sick committee and I have been on the

grievance committee, and I am on the grievance committee now, and I have been on various social committees.

Q. When were you first on the grievance committee? A. About three months ago.

Q. Did you hold any executive position or committee position while you worked for the Phelps Dodge Company? A. Not as an executive; just the sick committee and the social committee.

Trial Examiner Kennedy: That is all.

Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing more.

Trial Examiner Kennedy: Does either party want this witness back?

Mr. Persinger: No, sir.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Trial Examiner Kennedy: Mr. Persinger, I would like to get your theory as to this type of employee, or this type of complaining witness. As I get it from his testimony, he was not an employee of the Phelps Dodge Company during the strike. What kind of relief can the Board give a man in this position?

Mr. Persinger: As a matter of fact, Mr. Examiner, I haven't gone particularly into the question of relief. I have gone solely into the question of Section 83. I think the evidence shows that he was not reinstated following his picket duty because he was a member of the union, and because he had been on the picket line, which is a violation of Section 83.

As to what remedy the Board can give him, as I say, I haven't given it any particular thought as yet.

Trial Examiner Kennedy: You don't take the

position that he was an employee under the definition of the Act, do you?

Mr. Persinger: No, he was not an employee at the time of the strike or after.

Trial Examiner Kennedy: Very well. Proceed.

Mr. Persinger: Call Mr. Grover Cornett.

GROVER CORNETT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Grover Cornett.

Trial Examiner Kennedy: Mr. Persinger, I believe this man's name is spelled "C-o-n-n-e-t-t" in the minute charge.

Mr. Persinger: There are a number of these names, Mr. Examiner, which are spelled incorrectly in the charge and the complaint, and I expect later to amend that.

Trial Examiner Kennedy: You will be specific about that when you amend the complaint?

Mr. Persinger: Yes, I have all the correct names in the file.

Trial Examiner Kennedy: Very well. Proceed.

Direct examination:

Q. (By Mr. Persinger) Mr. Cornett, were you formerly employed by the Phelps Dodge Corporation? A. I was employed in '29 over a year.

Q. And you were laid off about a year later? A. Yes, sir.

Q. And after that when were you again employed? A. About June 7, '35.

Q. And on June 7, 1935, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the first day that you were on the picket line? A. It was on Tuesday, I believe, the second day of the strike.

Q. And what was the last day? A. About a week before the strike was over.

Q. And were you on the picket line frequently during that period? A. Yes, sir.

Q. After the strike was over, did you apply for work with the company? A. I did.

Q. When? A. Well, I don't remember—about a week after the strike was over I applied to Mr. Bateman.

Q. You applied to Mr. Bateman? A. Yes.

Q. Where? A. In his office at the Junction.

Q. In the employment office? A. Yes, sir.

Q. What time of day was it? A. About 9:30.

Q. And was anyone else present? A. No, he was by himself.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance for getting my job back.

Q. And what did he say? A. He said no, there wasn't any chance at all.

Q. Was that all that was said at that time? A. That is all.

Mr. Persinger: I offer as Board's Exhibit 28 in evidence the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 28.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 28.)

Mr. Persinger: The witness is with you.

Cross examination:

Q. (By Mr. Evans) Mr. Cornett, you are related by marriage to J. W. Fisher, the foreman of the Mines Division? A. Yes, sir.

Q. As a matter of fact, you never worked for the company at any time since the 19th day of February, 1930, isn't that a fact? A. Yes, I guess that is right.

Trial Examiner Kennedy: I would like to have that date, please.

Mr. Evans: Since February 19, 1930.

Q. And on June 10, 1935, you applied for employment, but never went to work? A. No, I didn't apply for work on the 10th.

Q. Oh, you were hired on the 8th to go to work on the 10th? A. The 7th.

Q. On the 7th? A. I believe that is the date.

Q. Are you sure whether it was the 7th or the 8th? A. Well, I am not exactly sure whether it is the 7th or 8th.

Q. Was it on a Saturday? A. On Friday.

Q. On Friday? A. Friday that I got hired.

Q. But you never reported for work or went to work? A. No.

Q. And you haven't at any time been employed by the company since June 7, 1935? A. No.

Q. Are you working at the present time, Mr. Cornett? A. Yes, I am working at the present time at the Denn.

Q. Shattuck Denn? A. Yes, sir.

Q. What is your job there? A. Tool nipper.

Q. Do you receive mucker's rate? A. Miner's.

Q. Miner's rate? A. Yes.

Q. $5.48 at the present time? A. Yes, sir.

Q. How long have you been employed at the Shattuck Denn? A. About a year and six months, I guess. About a year and a half, something like that, I am not sure.

Grover Cornett—For National Labor Relations Board—Cross.

Q. Do you recall at all the month in which you went to work for them? A. It was in May, in '36, I believe.

Q. In May of 1936? A. Yes, sir.

Q. And you worked continuously for the Shattuck Denn since that time, is that correct? A. Yes, sir.

Q. Who did you work for before you went to work for the Shattuck Denn? A. Nobody. I wasn't employed.

Q. You didn't have any employment then from June, 1935, we will say, until you went to work for Shattuck Denn? A. No.

Q. Did you work on relief? A. Yes.

Q. Continuously during that period? A. Yes.

Q. How many days a month? A. I don't remember exactly how many days.

Q. About what were you getting each month from relief? A. I don't remember how much it was, but I know it wasn't very much. It wasn't enough to live on.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Is that all?

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the union? A. Well, I have been a member of the union since I was employed, since I first came to town?

Q. Well, when was that? Give us the year and the month. A. Well, I don't remember. I was a member of the union when I first started here.

Q. When did you first go to work for Phelps Dodge? A. '29.

Q. Were you a member of the Union then? A. No.

Q. When was it,—'33, or what year, that you joined the Union? A. '33, around there some place.

Q. You have been a member continuously since then? A. Yes, sir.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Mr. Vaclav.

MARTIN VACLAV, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Martin Vaclav.

Direct examination:

Q. (By Mr. Persinger) Mr. Vaclav, were you formerly an employee of Phelps Dodge Corporation? A. Yes, sir.

Q. Prior to that did you work for the C. & A.? A. Yes, sir.

Q. When did you go to work for the C. & A.? A. 1927.

Q. At the time of the merger were you transferred to the payroll of Phelps Dodge? A. Yes, sir.

Q. When did you cease to work for Phelps Dodge? A. June 10th.

Q. What year? A. 1935.

Q. Between 1927 and 1935 had you worked continuously, or had you had layoffs? A. I worked continuously.

Q. What job did you have in June, 1935? A. I was a miner.

Q. At that time were you a member of the Union? A. Yes, sir.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. Do you remember the first day you went on the picket line? A. The morning of June 10.

Q. That was the day the strike started? A. Yes, sir.

Q. What was the last day? A. I believe the last day was the latter part of July.

Q. After the strike was over did you apply to the Company for reinstatement at any time? A. Yes, sir.

Q. When? A. The latter part of August.

Q. In other words, within a week or so after the strike was over? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. At the Employment Office.

Q. What time of day? A. Well, it was about 2:00 o'clock in the afternoon.

Q. Was anyone else present? A. No, sir.

Q. What did you say to him? A. I asked him for employment, and he told me that there was no need for me to come up there because he couldn't give me a job because I was one of the men that come out on strike.

Q. Anything further said at that time? A. No, sir.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 29 the employment record of the witness, in evidence.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 29.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) What time of day did you say it was when you called on Mr. Bateman? A. 2:00 o'clock.

Q. Was anybody else there? A. No, sir.

Q. Was anybody rustling? A. No, sir.

Q. You say it was in the latter part of August? A. Yes, sir.

Q. Do you remember the day of the week? A. No, sir.

Q. You do remember the conversation very clearly, though, don't you? A. Yes, sir.

Q. You couldn't hazard a guess as to what day of the week it was, or approximately what date? A. No, I couldn't.

Q. Do you remember when the picket line disbanded? A. Yes, sir.

Q. What date was that? A. 24th of August.

Q. Wasn't it the 21st of August? A. No, sir.

Q. Were you in attendance at Union meetings during the month of August, 1935? A. No, sir.

Q. Were you in the picket line every day during the course of the strike? A. No, sir.

Q. What was the last day you were in the picket line? A. It was the latter part of July.

Q. Did you leave the district in the latter part of July, 1935? A. Yes, sir.

Q. Where did you go? A. I went to Colorado.

Q. Whereabouts in Colorado? A. Denver.

Q. Did you get a job there? A. No, sir.

Q. How long did you stay there? A. I stayed there in Denver about two days.

Q. Then what did you do? A. Just traveled.

Q. When did you get back to the district? A. I got here right the latter part of August. I don't remember exactly what date it was.

Q. Would you say that this interview you had with Mr. Bateman was in the last week of August? A. Yes, sir.

Q. That would be, then, sometime between the 24th of August and the 1st day of September? A. Yes, sir.

Q. Do you remember whether it was the first part of the week or the last part of the week that you returned from Denver? A. I don't remember; I couldn't say whether it was the first or last part.

Q. You haven't any idea what day of the week it was that you called on Mr. Bateman? A. No, sir.

Q. After your return, Mr. Vaclav, did you obtain a job anywhere? A. Not in the state of Arizona, no.

Q. Where did you obtain one? A. When I left here and went back to Colorado.

Q. Back to Denver? A. No.

Q. Whereabouts? A. I went to Rosita.

Q. Rosita, Colorado? A. Yes, sir.

Q. Was that your home before you came here? A. Yes, sir.

Q. Did you obtain employment at Rosita, Colorado? A. Yes, sir.

Q. What doing? A. Working on a farm.

Q. What was the date, approximately, when you started working on the farm? A. I would say it was right around the middle of September sometime.

Q. The middle of September, 1935? A. Yes, sir.

Q. Were you employed as a farm laborer? A. Yes, sir.

Q. How long did you work at that job? A. I worked there until about November sometime.

Q. Sometime in November of 1935? A. Yes.

Q. Then what did you do? A. I didn't do anything; just laid around.

Q. Did you stay at Rosita? A. Yes, sir.

Q. How long? A. Until the fall of '36.

Q. You had no employment, then, from November, 1935, when you quit your job on a farm, and until your return here to the district? A. Well, I worked just on odd jobs; just off and on.

Q. In Colorado? A. Yes, sir.

Q. Can you tell us what those jobs were? A. Well, I worked for a fellow there on a lease. I worked there about a month and a half.

Q. On a mining lease? A. Yes, sir.

Q. What was your job with him? A. I was running the machine.

Q. When did you start that work? A. I believe that was in January, '36.

Q. January of 1936? A. Yes, sir.

Q. What rate of pay did you receive? A. $5.00 a day.

Q. Were you working 7 days a week? A. No; 6.

Q. 6 days a week? A. Yes, sir.

Q. And you say you worked on that job for about a month and a half? A. About a month and a half.

Q. What was the name of your employer? A. C. J. Caldorolia.

Q. What was that last name? A. Caldorolia.

Q. You might spell it for the Reporter. A. C-a-l-d-o-r-o-l-i-a.

Q. How did you happen to quit that job? A. We quit the lease, quit work.

Q. All right. What was the next odd job you had there in Colorado? A. Then I went back to work on a farm.

Q. The same farm you worked on before? A. Yes, sir, same farm.

Q. And how long did you continue on that job? A. Well, I just worked there just off and on until I believe it was in the Fall of '36.

Q. And at that time you left Colorado? A. Yes, sir.

Q. Where did you go from there? A. Came to Bisbee?

Q. Did you obtain employment when you returned to Bisbee in the Fall of 1936? A. Yes, sir.

Q. With whom? A. Shattuck Denn.

Q. What was the date of your employment? A. I don't remember, but it was in, I believe, January in '37 when I got the job.

Martin Vaclav—For National Labor Relations Board—Cross.

Q. Did you start in as a miner with the Shattuck Denn? A. No, sir.

Q. What was your job? A. Hired out as a mucker.

Q. What was your pay at that time? A. I believe it was $4.48.

Q. $4.48? A. $4.84, I believe it was.

Q. $4.84. How many days a week were you working in January, 1937, when you first started with the Shattuck Denn? A. Seven days a week.

Q. What was your rate of pay at the time you walked out on June 10, 1935? A. $5 a day.

Q. How many days a week were you working at that time? A. Five days a week.

Q. Have you been in the employ of the Shattuck Denn Mining Company continuously since 1937? A. No, sir.

Q. Are you employed by the Shattuck Denn at the present time? A. Yes, sir.

Q. Well, from January, 1937, how long did you work for the Shattuck Denn Mining Company? A. I worked until in May.

Q. May of 1937? A. Yes, sir.

Q. Do you remember the date? A. No, I don't.

Q. Why did you leave that job? A. I went home.

Q. You went back to Rosita, Colorado? A. Yes, sir.

Q. You voluntarily quit your job at the Shattuck Denn? A. Yes, sir.

Q. What did you do while you were in Rosita, Colorado, the second time? A. Just visited.

Q. How long were you there? A. I stayed there until in October.

Q. October of 1937? A. Yes, sir.

Q. Then what did you do? A. Come back to Bisbee.

Q. Did you get employment when you came back? A. Yes, sir.

Q. With whom? A. Shattuck Denn.

Q. What job? A. Miner.

Q. What was your rate of pay when you started? A. $6.

Q. How many days a week? A. Six days a week, I believe.

Q. Have you been employed continuously since that date with the Shattuck Denn Mining Company? A. Yes, sir.

Q. And are you employed at the present time by the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your present job with the Shattuck Denn? A. Miner.

Q. And what is your present rate of pay? A. $5.48.

Q. Have you ever been employed by Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. And you are not an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You received how much at the time you left Phelps Dodge? What was your pay? A. $5.

Q. $5 a day as a miner? A. Yes, sir.

Q. And you are now employed as a miner at Shattuck Denn? A. Yes, sir.

Q. Which job do you consider preferable? A. Well, I couldn't say.

Q. Do you see anything different between the two jobs? A. No, there isn't much difference.

Q. Just as soon work one place as the other? A. Well, I believe I would prefer working for the P. D.

Q. You would rather go back to the P. D.? A. Yes, sir.

Q. Would you rather go back if it involved a cut to $5 a day? A. No, I don't think I would go back and be cut. I would rather work for the standard rate of wages.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

MONTE REED, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Monte Reed.

Direct examination:

Q. (By Mr. Persinger) Mr. Reed, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by Phelps Dodge? A. In 1924.

Q. And you worked for them how long at that time? A. Three or four months.

Q. And you were next employed by them when? A. 1925.

Q. And you worked how long at that time? A. Up until 1930.

Q. And after 1930, you were next employed when? A. I believe it was '33.

Q. Do you remember the month? A. No, I don't.

Q. And beginning in '33, you worked how long? A. Up until 1935.

Q. What time in 1935? A. June 11th.

Q. June 11th? A. Yes, sir.

Q. In June, '35, were you a member of the union? A. No, sir.

Q. Did you go out on strike? A. Yes, sir.

Monte Reed—For National Labor Relations Board—Direct.

Q. And you went out the day after the strike started? A. The day after the strike started.

Q. Were you on the picket line at any time? A. Yes, sir.

Q. When was the first day you were on the picket line? A. June 11th.

Q. And that is the day you went out? A. Yes, sir.

Q. What was the last day you remember of having been on the picket line? A. June 26th.

Q. June 26th? A. Yes, sir.

Q. And during that period were you on the picket line continuously or frequently? A. Quite frequently.

Q. During the time you were on the picket line did you get a pay check? A. Yes, sir.

Q. When? A. June 21st.

Q. Was that the regular payday? A. Yes, sir.

Q. Did you speak with any official of the company, or supervisor, when you got the pay check? A. Yes, sir.

Q. Whom? A. Murray Bateman.

Q. And where did you see him? A. In his office.

Q. In his office? A. Yes, sir.

Q. And what was said at that time? A. Well, I went up and got this slip to get my pay check, they won't give me a pay check without a slip, and I went to Murray Bateman to get the check, and Murray Bateman asked me if I had moved my clothes out of the locker in the change room, and I said "No, I haven't." I said, "The strike isn't over yet and I haven't moved them."

And he said, "Well, we want you to clean them out."

He said, "Because as far as you fellows are concerned, the strike is never going to be ended for you."

Q. Anything further said at that time? A. Not a thing.

Q. After the strike was over did you apply for work with the company? A. Not until 1936.

Q. And what time in '36? A. Along in the first part of June, I believe, the month of June.

Q. To whom did you apply? A. Keith Davey.

Q. Who was Keith Davey? A. Keith Davey was the Employment Agent in Murray Bateman's place while he was off on vacation some place.

Q. Where did you meet Keith Davey? A. I met him at a bar up on Brewery Gulch.

Q. And was anyone else there? A. How is that?

Q. Was anyone else there? A. Yes, there was one other man with me.

Q. Who was that? A. August Gallagher, better known as Hugh Gallagher.

Q. What time of day was that? A. Along about 7:00 o'clock in the evening.

Q. What did you say to Mr. Davey? A. I just asked if there was any chance of going to work for the Queen again. If there was, I would come down and rustle.

Q. What did he say? A. He said there never was any chance for me to come back there and go to work, and no other fellows that was out on strike.

Q. Anything further said? A. No, outside of just talking, was all.

Q. Have you applied since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 30, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 30.

(Thereupon the document above referred to was received in evidence and marked as "Board's Exhibit No. 30.")

Mr. Persinger: The witness is with you.

Cross examination:

Q. (By Mr. Evans) You drew down your pay on June 21, '35, did you not? A. Yes, sir.

Monte Reed—For National Labor Relations Board—Cross.

Q. You are not employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. And you have not been an employee of that company since June 11, 1935, have you? A. No, sir.

Q. Where are you working at the present time? A. Denn mine.

Q. That is, the Shattuck Denn Mining Company? A. Yes, sir.

Q. When did you go to work for the Shattuck Denn? A. August 14, 1936.

Q. You have worked there continuously since that time? A. Yes, sir.

Q. What kind of work are you doing? A. Mining.

Q. Do you receive $5.48 a day? A. Yes, sir.

Q. When did you say you went to work for the Shattuck Denn? A. August 14, 1936.

Q. From June 11, 1935, until August 14, 1936, did you work any place else? A. Only on the W. P. A.

Q. You were employed on W. P. A. work during that time? A. Yes, sir.

Q. How many days a week? A. Well, just so many days a month, is what it was.

Q. How many days a month? A. Well, I don't rightly remember. At the last there they was cut down to a little better than 8 days a month.

Q. But you got more than 8 days during the greater part of that period? A. Yes.

Q. And the pay was $4.00 a day? A. No; $50 a month.

Q. $50.00 a month? A. Uh-huh.

Q. Were you on a salary? A. No. That's the way they pay on all that W. P. A. work; so much—whatever you are hired out as.

Q. You participated in the attack on Larry Kuder during the strike, did you not? A. No, sir.

Q. You were there at the time, were you not? A. Yes, sir.

Monte Reed—For National Labor Relations Board—Cross.

Q. Did you not—Do you mean to say that you did not participate in the attack on him? A. I did not.

Q. Who did? A. Jack Cornett.

Mr. Persinger: Just a moment, Mr. Examiner. I object to that question.

Trial Examiner Kennedy: Overruled.

Q. (By Mr. Evans) Where were you from June 26, 1935, on? A. I was in the hotel, upstairs, there—the jail.

Q. Larry Kuder was an employee of the company, was he not? A. I believe he was.

Q. How did you know that Keith Davey was working as an employment agent? A. Just through hearsay.

Q. As a matter of fact, he is an engineer working for the company, is he not? A. He has been.

Q. You do not know of your own knowledge whether he was an employee acting as employment agent at the time you saw him? A. He told me that he was when I asked him.

Q. That was up on Brewery Gulch? A. Yes, sir.

Q. What mine were you working in—that is, what shaft—at the time you left the employ of the company on June 11th? A. Junction.

Q. You were working at the Junction? A. Yes, sir.

Q. What rate of pay were you receiving? A. Miner's pay.

Q. That was about $5.00 a day at that time? A. $5.00 at that time.

Q. You were employed as a miner at that time? A. Yes, sir.

Q. You were prosecuted for the assault on Kuder, were you not? A. I was acquitted of it.

Q. As a matter of fact, there was a hung jury as a result, was there not? A. Hung jury in the first case, yes.

Q. And the case was then dismissed? A. The case was dismissed for lack of evidence.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You are now employed as a miner at the Shattuck Denn, is that right? A. Yes, sir.

Q. $5.48 a day? A. Yes, sir.

Q. How many days a week do you work? A. 6 days a week.

Q. 6 days a week. How many days a week did you work at Phelps Dodge? A. At that time they was only working 5 days a week.

Q. And you were paid $5.00 a day? A. Yes, sir.

Q. Which job do you consider preferable? A. Well, at the rate of pay—if the rate of pay was the same, why, I would prefer the Shattuck Denn.

Q. You would prefer Shattuck Denn. That is where you are now? A. Yes, sir.

Trial Examiner Kennedy. That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Bigelow.

CLYDE BIGELOW, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Clyde Bigelow.

Direct examination:

Q. (By Mr. Persinger) Mr. Bigelow, were you formerly employed by the Phelps Dodge Corporation? A. Yes.

Clyde Bigelow—For National Labor Relations Board—Direct.

Q. When were you first employed by Phelps Dodge? A. Well, I was first employed at about 1918, as near as I can remember.

Q. Did you work continuously off and on after that? A. Off and on.

Q. Do you remember about when the merger took place between the C. & A. and Phelps Dodge? A. Do I remember what?

Mr. Persinger: Strike the question.

Q. Were you working for Phelps Dodge in 1931? A. Yes, sir; I was working when the merger took place.

Q. You were? A. Yes.

Q. Since that time how long did you work? A. Well, I worked up until '31; I was laid off for about 8 days, and then worked again,—I was called back and worked three or four months, and then was laid off again.

Q. And then back how much later? A. Then I went back in '33.

Q. And after '33 you worked how long? A. Continuous until the strike.

Q. How did they call you back in '33? A. By a letter.

Q. Do you have that letter with you? A. No, I haven't.

Q. In June of '35 were you a member of the Union? A. No, sir.

Q. Did you go out on strike with the Union? A. Yes, sir.

Q. Were you on the picket line? A. No, sir.

Q. After the strike was over, did you apply for work with the company? A. Yes, sir.

Q. When? A. Well, I applied in September, after the strike was over—the month of September.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. In the employment office.

Q. What time of day? A. Oh, it was about 9:30 or 10:00 o'clock. It was after the majority of the crowd had left.

Q. Was anyone else there when you went in? A. Well,

there was the insurance writer in his end of the office. He had an office at the end where the insurance writer always stayed, but there was no one in Bateman's office.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance for a job.

Q. What did he say? A. "No," they hadn't reinstated any of the striking miners yet.

Q. Anything further said? A. No.

Q. Have you applied since that time? A. I applied again in '36, about December.

Q. To whom did you apply at that time? A. Mr. Bateman.

Q. Where? A. At the employment office.

Q. What time of day was it? A. Well, it was around about 10:00 o'clock.

Q. Anyone present at that time? A. Well, no. There wasn't anybody but what was in the outer office there. There was nobody in Mr. Bateman's office.

Q. What did you say to Mr. Bateman at that time? A. I asked him if I could get a job now, and he said, "What! Back again?"

I said, "Yes."

He said, "Well, you're a glutton for punishment."

"Well," I said, "what have they decided to do?"

"Well," he said, "we ain't going to reinstate any of the men."

"Well," I said, "will there be any use of me rustling again?"

And he said, "No."

Q. Anything further said at that time? A. No.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 31 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 31.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Did you state, in answer to Mr. Persinger's question, that you were or were not a member of the union on June 10, 1935? A. I was not a member.

Q. You were not a member? A. No, sir.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. What was your job with the Phelps Dodge Corporation prior to the time you walked out, just immediately prior? A. I was a miner.

Q. Stope miner? A. Yes, sir.

Q. And where were you working? A. Working in the Campbell shaft.

Q. What was your rate of pay at that time? A. $5 a day.

Q. And you were working how many days a week? A. Five days.

Q. Have you obtained employment since June 10, 1935? A. Well, I have obtained temporary employment; jobs I knew wouldn't last long.

Q. Well, let's start with June 10, 1935, and run down and see what you have had. A. Well, after we went out on the strike, I went and worked on relief for a period of—I don't know, just about three months, and then I got a job with the Government on a planning survey, and that job lasted three months.

Q. Where does that take us to? A. That is still in the county, it lasted about three months.

Q. And that takes us up, we are still in 1935? A. In that—no, that wouldn't be in '35.

Q. That would take us up, then, to January or February of 1936? A. Yes.

Q. Just what was that job, please? A. Well, I was rodman on the remapping survey in the County of Cochise. We were mapping out all roads in the County of Cochise for the Government.

Q. That was not a relief job, was it? A. Yes, sir, it was through the National Re-employment Agent.

Q. How much did you get paid on that job? A. A hundred dollars a month.

Q. A hundred dollars a month? A. Yes.

Q. And you say you had that job about three months? A. Yes, sir.

Q. Could you tell us approximately when you started on that job? A. Well, I am afraid I couldn't give a very good date.

Q. I know you can't recall the exact date, Mr. Bigelow. Perhaps you can date it back to August, 1935. Were you in the picket line through the strike? A. No, sir.

Q. Were you in the picket line at any time during the strike? A. No, sir.

Q. Are you familiar with the circumstances surrounding the disestablishment of the picket line in August of 1935? A. No, I was—I wasn't in town, when the picket line was broke up.

Q. Whereabouts were you? A. I was rustling a job in Texas.

Q. Whereabouts in Texas? A. Well, West Texas, around Big Springs and Odessa and in that part of the country.

Q. Did you get a job over there? A. No. I come back then and took a civil service examination for the Border Patrol.

Q. When did you come back? A. I came back about the 17th of September.

Q. And you took the civil service examination right away when you came back? A. Yes, sir. I come back—I couldn't find anything out there and I come back for that sole purpose of taking that examination.

Q. When was it that you made this first application, Mr. Bigelow, to Mr. Bateman that you referred to? A. After I took the examination. It was within two or three days.

Q. Did you pass that examination? A. No, sir.

Q. Well, now, we are up to the latter part of September. Can you estimate now the date upon which you went on this Government job? A. (No response.)

Q. Was it in September or October? A. No, it was further back than that—further ahead than that—it was in about June some time.

Q. June of 1936? A. Yes, sir.

Q. What did you do during that intervening period when you returned from Texas? A. I worked on relief up here.

Q. You had no other regular employment during that time? A. No, sir.

Q. Did you make application for employment at other places other than the Phelps Dodge Corporation? A. Yes, sir.

Q. Where did you apply? A. I applied at several different places. I worked here for a while, checking—paying back bills on a grocery bill up here.

Q. You did work, though, in addition to your relief work? A. Well, I didn't draw no pay. I worked for my groceries up here at Moore's Store for my family.

Q. Then you think it was in June, 1936, that you went on this Government survey job at a salary of a hundred dollars a month? A. Yes.

Q. Then you worked for three months at that? A. Yes.

Q. That would be the months of June, July and August, 1936? A. Yes, sir.

Q. Was that job completed at the end of August? A. Yes, sir.

Q. And the survey was completed? A. It was completed in this county.

Q. Then what did you do after that? A. Well, I went to work for Pleasant-Hasler on a contracting job. I was at Huachuca.

Q. Was that September of 1936? A. Yes.

Q. How long did you work for them? A. I worked about 29 days.

Q. What was your rate of pay on that job? A. Well, I started in at 50 cents an hour and then I raised it up to 65 cents an hour.

Q. How many hours a day? A. Well, we worked 8 hours a day.

Q. And were you working 7 days a week? A. No, we were working 6 days a week.

Q. During the 29-day period that you mentioned? A. Yes.

Q. And then was that job completed about the first of October? A. Practically completed; yes, sir.

Q. Did you quit before the job was completed? A. Well—no, the job wasn't quite completed. Yes, I quit before the job was completed.

Q. You could have had further employment, though, for a while longer? A. Well, for a few more days.

Q. What did you do after that? A. I left for Northern California.

Q. Did you obtain employment there? A. Yes, sir.

Q. What doing? A. I was a miner.

Q. Whereabouts? A. In the Mother Lode country, about 14 miles out of Jackson, Amador City.

Q. What was the name of your employer? A. The original Amador Gold Mining Company.

Q. You were employed as a miner? A. Yes, sir.

Q. That would be in about October, or probably November, of 1936? A. Yes, sir.

Q. What was your pay there? A. $4.00 a day when we first started, and then after we was there about a month the company raised the wages to $4.50 a day.

Q. How many hours a day—I mean, how many days a week did you work? A. We was working 6 days a week.

Q. How long did you stay on that job, Mr. Bigelow? A. I stayed on there, oh, about two months, I guess, or pretty near two months.

Q. How many hours a day were you working there? A. 8 hours.

Q. You say you stayed on there about three months? A. About two months.

Q. Two months? A. Yes.

Q. That must take us pretty near up to the first of 1937? A. Almost to the first of 1937.

Q. Then what did you do, Mr. Bigelow? A. Then I came back to Bisbee.

Q. Have you had any employment since you returned to Bisbee? A. Yes, sir. I worked at the Shattuck lease.

Q. The Shattuck lease? A. Yes, sir.

Q. When did you start work at the Shattuck lease? Was it in January, 1937? A. No, it was later—it was in about February that I started at the Shattuck lease.

Q. How did you happen to leave that job in Northern California? A. On account of contract trouble.

Q. On account of what? A. Contract trouble. I had trouble over a contract that I was going to take, and we had a disagreement and I left.

Q. You had a disagreement with the company you were working for? A. Yes, sir.

Q. Were you discharged? A. No, sir.

Q. You just quit? A. Yes, sir.

Q. What job were you working at when you were with the Shattuck lease? A. I was a cager and a shaftman.

Q. How long did you work on that job? A. Approximately 4 months.

Q. What was your rate of pay? A. We was in the—When I was in the shaft I was getting $6.10 a day. When I was caging I was getting $5.50.

Q. $5.50? A. Yes.

Q. How many days a week were you working? A. We was working 7 days a week in the shaft, and when I went to caging we was working 6.

Q. And you worked 4 months, approximately. That would be the months of February, March, April and May of 1937? A. Yes.

Q. Is that about right? A. Just about.

Q. Why did you quit that job? A. There was a layoff.

Q. What employment have you had since then? A. Well, at present— The present job I am on now is at Wootten's Hardware.

Q. Have you been on that ever since you were laid off the Shattuck lease? A. No, I was off about two months after that. I didn't—I worked then a few times on relief. I got back on the relief and worked a few turns there with the relief, and then I got this job with Wooten's.

Q. What is your job with Wooten's Hardware Company? A. Well, plumber's helper, and I do some plumbing.

Clyde Bigelow—For National Labor Relations Board—Cross.

Q. Are you on a day basis or a salary basis? A. I am on an hourly basis.

Q. On an hourly basis? A. Yes.

Q. How much do you get an hour? A. Well, when I am helping I get 50 cents an hour, and when I am doing plumbing work I get 87 cents an hour.

Q. 87 cents an hour? A. Yes.

Q. What were you averaging in the way of hours per day on that job? A. Well, I wouldn't average—in the last three months I wouldn't average over $20 a week.

Q. How about the periods prior to the last two or three months? A. Well, there for a while we averaged about $36.00.

Q. $36.00 a week? A. Yes. But that didn't last very long.

Q. But during that period you were working four weeks out of every month? A. Yes.

Q. So that you were getting about $144 a month? A. Yes. The last week I drawed $9.00—or, $12.00.

Q. Have you ever worked for the Shattuck Denn Mining Company? A. No, sir.

Q. Did you ever apply for work there? A. Yes, sir.

Q. Were you rejected? A. I was turned down on a medical examination twice.

Q. What was the reason for your being turned down, Mr. Bigelow? A. X-ray pictures—silicocis.

Q. Would you want to go back to work underground again? A. Yes, if they would send for me.

Q. In spite of your condition? A. Yes, sir.

Q. You would go back if they sent for you? A. Yes.

Q. What do you mean by that? A. Well, I don't mean that I would go rustling them again.

Q. Do you recall Mr. Luther Henderson? A. Yes, sir.

Q. When did you leave for Texas after you worked out on June 10th? A. Well, I left in August—early in August. I only stayed down there about 10 days.

Q. Down in Texas? A. That's all, 10 or 12 days; something like that.

Q. But you testified, I believe, that you were not in the picket line? A. I never was in the picket line.

Q. Were you mixed up in any fights during the course of the strike? A. No, sir; no, sir.

Q. Didn't you and Mr. Henderson both spend time in jail for a fight? A. Not me; no, sir.

Mr. Kitchel: I think that is all.

Redirect examination:

Q. (By Mr. Persinger) You referred to a job on which you had some contract trouble. Where was that job? A. Amador City; the original Amador Mining Company.

Q. What state? A. California.

Q. What sort of a job was it? A. I was a miner; drift driving.

Q. When was the last time you were turned down on a medical examination by Shattuck Denn? A. Oh, about 5 months ago.

Q. When was the first time? A. Well, 2 months before that; 2 or 3 months before that.

Q. This mine that you had some contract trouble with, do you know if it is still operating? A. No, sir; it is closed down.

Q. Do you know when it closed down? A. No, I couldn't say when it did close down. It wasn't long after I left there that it closed down.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Did you ever join the Union?

The Witness: No, sir.

Trial Examiner Kennedy: You never belonged?

The Witness: No, sir.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will take a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows):

Trial Examiner Kennedy: (After recess) The hearing will be in session.

MILTON WYNN, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

A. Milton Wynn.

Direct examination:

Q. (By Mr. Persinger) Mr. Wynn, were you formerly employed by the Phelps Dodge Corporation? A. I was; yes, sir.

Q. When were you first employed? A. Well, it was around '24 or '25—I was employed for about 3 months at one time.

Q. You were in school at that time? A. Yes, sir.

Q. And since you left school, when were you first employed? A. '34; I think it was around June, I think it was; it might be a little bit before; I am not sure.

Q. And at that time what job did you start in at? A. As a mucker.

Q. And you were employed continuously for how long? A. For a little over a year.

Q. Up to the time of the strike? A. Up to the time of the strike, a little over a year. I think it was a year and a few days, to be exact.

Q. And just before the strike, what job did you have? A. I was—I went mining, and then after that I went on the Gunite Machine.

Q. What rate of pay is in effect on the Gunite Machine? A. I think it was $5.23 that I was getting.

Q. Was that the same as a miner's rate at that time? A. No; the miners were around $5.00, I think it was.

Q. In June, 1935, were you a member of the Union? A. No, I was not; I dropped out.

Q. Did you go out on strike with the Union? A. Yes, sir.

Q. Were you on the picket line? A. I went down more out of curiosity once or twice. I didn't actually take any part in the picketing. I stayed away from it most of the time.

Q. And after the strike was over did you apply for reinstatement with the company? A. Well, I waited for Bateman and I caught him around the garage there. I had had a letter from a friend of mine—a friend of mine had a letter from Idaho, and he was thinking of going up there, and this fellow knew I was going up there with him, and he wrote to this fellow that if I was coming up I had better get a service letter, that they were having the same trouble up there. So I hit him up and asked him if there was any chance of going to work, and he said, "No."

Q. What did Mr. Bateman say? A. He said, "No." And then I asked him about a service letter and he said, "No," to that, too.

Q. That was all, that was said then? A. That was all that was said.

Q. Have you applied at any time since? A. No, I haven't.

Mr. Persinger: I offer as Board's Exhibit 32 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection; no.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 32.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) You worked for the Company about a year, Mr. Wynn? A. Yes, sir.

Q. Before you went out? A. Yes, sir.

Q. When was it that you saw Mr. Bateman? A. Why, it was a week or two after it was called off. I don't know for sure; I couldn't say. I waited for him down there—— I didn't want to go down to the Employment Office; I didn't know what kind of a reception I would get, and I thought I could see him just as well as I could there, you know, when he parked his car there. He usually parked it there before he went up to the hotel.

Mr. Evans: May we have this off the record for a moment?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Coss examination (continued):

Q. (By Mr. Kitchel) You say that was a week or two after? A. I think it was, Mr. Kitchel. I couldn't say. I think it was; yes, sir.

Q. What did you do after you walked out on June 10, '35, Mr. Wynn? A. I—— Oh, I didn't do much; I laid around for a while. After I had seen Bateman I took a trip and I went over in that fall, I think it was; I went up to around Kingman and Oatman. I took a trip up around there, and then I worked at Miami for about a month and a half.

That was in, I think, I quit there right around—right in around November, and then I worked at Parker Dam for a week.

Q. Let's get this first job. You say that was at Miami? A. Miami; yes, sir.

Q. For whom were you working there? A. Inspiration. I worked there around a month.

Q. Inspiration Copper Company? A. Yes, sir.

Q. When would that be, Mr. Wynn? A. I think it was, to the best of my knowledge—I think it was around November.

Q. Of 1935? A. It was after the strike, yes.

Q. Yes. What was your job with the Inspiration? A. I was what they called a "raise runner." That was, in other words—it was loading trains. They called it "swamping on the motor."

Q. What was your rate of pay with them? A. It was—well, I was supposed to be getting $5, but there was some argument over the rating, and I was only getting $4.40 then, and that's why I quit.

Q. You worked there about a month? A. A little over a month; around in that vicinity.

Q. A little over a month. How many days a week were you working? A. Six, I think. I think it was six days.

Q. Then when you left Miami, what did you do, Mr. Wynn? A. I came over here and I worked extra around here. I was tending bar, and then I left here and went to Parker Dam, and I worked there five days and a half, I think it was.

Q. When was that? A. That was around December.

Q. Of 1935? A. Yes, sir. I think it was then.

Q. For whom were you working at Parker Dam? A. I forget the name of the construction outfit. I don't know who it was.

Q. What kind of a job did you have? A. I was tending chuck.

Q. Tending what? A. Chuck tender on the machines.

Q. What pay did you receive the five days and a half you were there? A. There was no five days and a half. It was a 40-hour week we worked. I think it was a 40-hour week, or maybe it was a 30-hour. I think we worked five 6-hour shifts. I think that's the way it was—five 6-hour shifts. We worked 33 hours a week. I couldn't be positive.

Q. What was the pay, do you remember? A. Well, I think it was around 70-some-odd cents an hour. I think that is what it was, 72 or 75; I couldn't be sure.

Q. Isn't it true, Mr. Wynn, that at the times that you were here between those trips and after you walked out on June 10, 1935, that you were generally tending bar? A. No, not all the time I was not. I worked one day a week; maybe two days; maybe around a holiday I would get in a day or two days, but I wasn't steady; no, sir.

Q. For whom did you work when you did that work? A. I worked for Dan Peccola, and then I worked once in a while for Fuller.

Q. Well, after your work on the Parker Dam did you voluntarily leave that job? A. Yes, sir; I did.

Q. Then what did you do? A. I came back here and then I was working two or three days a week, or whatever

I could, around here up until now. Then a year previous to this last January I have been working steady, up until the first of the year and during the recession, when I was laid off. I worked a day or two a week now.

Q. Is that for Mr. Peccola? A. Yes, sir.

Q. What is your pay there? A. I was getting—last Summer I was getting $45 a week—$40 or $45, around there. When I quit I was getting $25, or when I was laid off I was getting $25.

Q. $25 a week? A. Yes, sir; when I was laid off.

Q. When you were last working for the Phelps Dodge Corporation, you were working on mucker's pay, is that correct? A. No, sir. When I came out on strike I was getting $5.23 a day, I think.

Q. What was your job? A. Gunite machine. I think that was the rate of pay; I am not positive.

Q. And you were working five days a week? A. Yes, sir.

Q. So that your monthly income, at that time, would average a little in excess of a hundred dollars a month? A. Yes, sir.

Q. So you say that you were not a member of the union on June 10, 1935? A. No, sir; I was not.

Q. And that you did not go on the picket line? A. I went down out of curiosity once or twice to see how it was conducted, but I didn't take any active part in trying to stop any men from going to work or discouraging them, or anything like that. My sentiments, though, were with the union.

Q. Where was it you said that you saw Mr. Bateman when you asked him about this letter? A. Angelari's Garage. You know, where he parks his car. I waited for him there. I thought I could see him there as well as I could at the office. I didn't know what kind of a reception I would get there.

Q. You know Mr. Bateman pretty well? A. Yes, sir.

Q. You are pretty good friends? A. No, I wouldn't say thick friends. I know him well enough to say "Hello" to him when I see him.

Q. Are you employed at the present time? A. No. I am working the last two days. I am working now like I did before, whenever there is a chance.

Q. At Mr. Peccola's? A. Yes, sir.

Q. Did you attend any union meetings just prior to June 10, 1935? A. No, I did not; no, sir.

Q. When did you become a member of the union? A. Well, right after I went to work I joined the union, and then I paid in dues. I think it was two or three months, and then I dropped out.

Q. That was in 1934? A. Yes, sir.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: I am assuming that all of these witnesses are permanently excused, unless counsel indicate that they expect to call them back.

Mr. Persinger: They are.

Mr. Kalastro.

ALEXANDER KALASTRO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Alexander Kalastro.

Direct examination:

Q. (By Mr. Persinger) Mr. Kalastro, were you formerly employed by Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. I believe in August of '34.

Q. And you worked how long? A. About a year.

Q. When did you stop? A. August 24th.

Q. When did you stop work? What was the last day you worked? A. Two days after the strike was called.

Q. What was your job when you started? A. Swamper, —pocket man.

Q. What rate of pay was that? A. I believe it was $4.40.

Q. That was mucker's pay? A. Yes.

Q. What job did you have in June, '35? A. Swamper on a motor.

Q. What does that pay? A. $5.

Q. Same as a miner? A. Same as a miner.

Q. Were you a member of the union at the time of the strike? A. Yes, I was.

Q. And you worked two days after the strike? A. Yes, sir.

Q. Then you went out? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the first day you went on the picket line? A. The first day after I came out on the strike.

Q. And what was the last day you were on the picket line? A. That was on the day—that was the only day I was on the picket line.

Q. That was the only day? A. Yes, sir.

Q. And after the strike was over did you apply for reinstatement? A. I did.

Q. To whom? A. Murray Bateman.

Q. When? A. The latter part of August, '35.

Q. What time of day was that? A. I presume around 9:00 or 10:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. Where? A. At the Phelps Dodge Employment Office.

Q. Was anyone else present? A. No.

Q. What did you ask Mr. Bateman? A. "How about a job?"

Q. What did he say? A. "Nothing doing."

Q. Anything else said? A. Not a word.

Q. Have you applied since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 33 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 33.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) You are not employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. You haven't been an employee of the company since approximately June 12, 1935? A. No, sir.

Q. And then when you walked out on June 12, 1935—in other words, you severed your employment relationship with the company at that time, is that correct? A. Yes, sir.

Q. Why did you go out on June 12, 1935? A. I didn't want to discriminate against my fellow-workers.

Q. Why didn't you go out on the 10th, if that is the case? A. I didn't know the outcome of it.

Trial Examiner Kennedy: I didn't hear the answer. Read the answer, please, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Q. (By Mr. Evans) What do you mean, you didn't know the outcome of what? A. I wasn't in town at the time.

Q. Oh, you weren't in town at the time? A. No.

Q. Where were you? A. I was out in Huachuca Mountains.

Q. When did you first go back to work? A. Well, I was in Huachuca Mountains for the week-end.

Q. You worked Monday, didn't you? A. Yes, I did.

Q. That is the 10th; you worked Tuesday, the 11th? A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn.

Q. Shattuck Denn Mining Corporation? A. Yes, sir.

Q. And what is your job? A. Miner.

Q. What rate of pay do you receive? A. $5.48.

Q. How long have you been employed at the Shattuck Denn? A. In February it will be a year.

Q. February, 1937? A. Yes.

Q. Last February? A. Last February I went to work.

Q. And what job did you have when you went to work for the Shattuck Denn? A. Trammer.

Q. What rate of pay did you receive? A. I don't remember exactly.

Q. Is that the same as miner's pay? A. No. It is the mucker's pay, the same as mucker's pay.

Q. You received mucker's pay? A. Yes, sir.

Q. At that time it was in excess of $5 a day, was it not? A. I presume.

Q. And you worked continuously in the Shattuck Denn since February of 1937, didn't you? A. Yes, except—I have been laid off now; it has been two weeks.

Q. You have been laid off for two weeks? A. Yes, a week at a time. We are taking turn-abouts, and now I went mining, I was caging, and I went mining, and when I was caging I was off for two weeks.

Q. When was that? A. Well, I just went to work this last week. The week before that I was off, and then worked two weeks, and I was off the previous week to that.

Alexander Kalastro—For National Labor Relations Board—Cross.

Q. What was the highest rate of pay you received while working for the Shattuck Denn? A. $6.24.

Q. Now, from June 12, 1935, until February of 1937, did you work for anyone? A. Odd jobs.

Q. What was the first job you held after June 12, 1935? A. I was on the relief.

Q. And how long were you working on relief jobs? A. About two months.

Q. How many days a month were you working? A. Six or seven. I am not positive.

Q. Then what did you do after the expiration of that two months? A. Washing dishes.

Q. Whereabouts? A. Palace Cafe.

Q. How long did you work there? A. I don't exactly remember. It was two or three months.

Q. And did you work every day? A. No.

Q. How often did you work during that two or three months? A. I worked during week-ends, Friday, Saturday and Sunday, holidays.

Q. How much did you make? A. A dollar a day.

Q. And approximately how many days a week did you average? A. Oh, three, four, sometimes five.

Q. You also received your meals, did you not? A. Yes, sir.

Q. Then what did you do after you left the Palace Cafe? A. Grocery clerk.

Q. Whereabouts? A. American Cash Grocery.

Q. In Bisbee? A. Yes, sir.

Q. And how long did you work there? A. I am not positive; about six or seven months.

Q. Did you work there until you went to work for the Shattuck Denn? A. Yes.

Q. And your employment with American Cash Grocery was continuous during that period? A. No.

Q. Well, did you work steadily during that six or seven months' period? A. Well, I worked—yes, steady.

Alexander Kalastro—For National Labor Relations Board—Cross.

Q. How many days a week did you work? A. Oh, let's see. I worked—well, six days.

Q. What pay did you receive? A. $2 a day.

Q. Those are the only jobs that you have held since—up to the time you went to work for the Shattuck Denn? A. Yes, sir.

Q. You were on the picket line? A. Once.

Q. Were you here during the entire time of the picketing? A. Yes, sir.

Q. That is, in the Bisbee district? A. In the Bisbee district.

Q. Now, approximately what time in August was it that you say you saw Bateman? A. The latter part of August.

Q. Do you know the date? A. Not exactly, no, sir.

Q. Would you know the day of the week? A. I believe it was Wednesday; I am not positive. Tuesday or Wednesday.

Q. Was it before or after the picket line terminated? A. After.

Q. What time of day did you see him? A. 9:00 or 10:00 o'clock.

Q. And that was at his office? A. Yes, sir.

Q. Was there anyone there? A. No, sir.

Q. Anyone outside of his office? A. There were some fellows walking around there. I didn't pay no attention. Just walked in.

Q. As a matter of fact, that was after rustling hours, was it not? A. Yes, sir.

Q. Where were you working just prior to the time you left the employ on June 12th? What shaft? A. Campbell shaft.

Q. Have you ever been back to see Mr. Bateman since August, 1935? A. No, sir.

Mr. Evans: That is all.

Mr. Persinger: Nothing further.

Alexander Kalastro—For National Labor Relations Board—Recross.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you consider that your present work is better than that which you had at Phelps Dodge when you left Phelps Dodge? A. No.

Q. You would rather go back to Phelps Dodge? A. Yes, sir.

Q. You are making more money now than you did there? A. Yes, sir.

Q. Would you be willing to go back to Phelps Dodge for what you were drawing at the time you left there? A. Yes, sir.

Trial Examiner Kennedy: That is all.

Mr. Evans: Just a moment, please.

Recross examination:

Q. (By Mr. Evans) Why would you rather go back to Phelps Dodge at less pay? A. I have been here all my life, and Phelps Dodge is a more substantial company. I can also go back to Shattuck Denn any time, but they might close down at any time.

Q. As a matter of fact, Shattuck Denn has been operating in this community for 20 or 30 years, has it not? A. Yes, it has, but you never can tell when they might lay you off.

Q. And, as a matter of fact, they have just opened up a new large ore body, have they not? A. Yes, sir.

Q. Are you married or single, Mr. Kalastro? A. Married.

Q. When were you married? A. I couldn't tell you the exact date.

Q. I mean, has it been recently? A. No, it has been in '34.

Q. In 1934? A. I believe, yes.

Q. While you were working for the Phelps Dodge Corporation? A. Yes, sir; Phelps Dodge Corporation.

Mr. Evans: That is all.

Trial Examiner Kennedy: Another question: When you worked for Phelps Dodge you received certain medical service, did you? Do they have such an arrangement in case you are sick?

The Witness: Yes, sir.

Trial Examiner Kennedy: Of what did that consist?

The Witness: You would go to the hospital in case you hurt your finger or sprained your arm; go to the hospital and get treatment for it.

Trial Examiner Kennedy: Without charge to you?

The Witness: It was taken $2—I believe that was the rate that we was paying; I am not positive—out of your pay check per month.

Trial Examiner Kennedy: Do you get that service at Shattuck Denn?

The Witness: They take it out, but I never did go up. The wife has been up to get service.

Trial Examiner Kennedy: You get the same service at Shattuck Denn as you did at Phelps Dodge?

The Witness: Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Bigelow.

W. H. Bigelow—For National Labor Relations Board —Direct.

W. H. BIGELOW, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?
The Witness: W. H. Bigelow.

Direct examination:

Q. (By Mr. Persinger) Mr. Bigelow, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by the company? A. Oh, 1908.

Q. Did you work continuously after that? A. No, sir.

Q. Off and on? A. Off and on.

Q. What was your last lay-off? A. The last lay-off?

Q. When was the last time you were laid off? A. Oh, 1931, I believe, or '30.

Q. When did you go back to work after that? A. About March or April—the last of March or first of April in '34.

Q. And you worked how long that time? A. Oh, about a year; a little better than a year, I guess.

Q. When did you finally quit work? A. I come out on strike.

Q. At the time of the strike what job did you have? A. I was mining.

Q. Were you a member of the union at that time? A. Yes, sir.

Q. Were you on the picket line during the strike? A. I was.

Q. After the strike was over did you ever apply to the company for reinstatement? A. No, sir.

Q. Why not? A. Well, my brother did, and he said there was no use in rustling Mr. Bateman.

Q. Who is your brother? A. Clyde Bigelow.

Q. And as a result of that you have not applied at any time? A. No, sir.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 34, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 34.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Bigelow, are you an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. June 10, 1935? No, sir.

Q. You were employed at what shaft at the time that you went out on June 10? A. Junction.

Q. You were working as a miner? A. Yes, sir.

Q. What was your rate of pay? A. $5.00.

Q. $5.00 a day? A. I believe so.

Q. How many days a week were you working at that time? A. I believe it was five days.

Q. Were you in the picket line all during the month of June, after June 10, 1935? A. No, not all the time.

Q. Were you in the picket line in the month of July? A. Well, I was on the picket line there for two weeks steady, and then about once a week, or maybe every two weeks, whenever I happened to be in town.

Q. Well, were you in the picket line off and on until August 21? A. Yes, sir.

Q. Were you in the picket line on the last day that there was any picketing? A. No, sir.

Q. Do you know what date that was? A. August 24, I believe.

Q. Well, do you know that August 24th was a Monday? A. No, I couldn't swear to that.

Q. After you walked out on June 10, 1935, Mr. Bigelow, what employment did you obtain after that? A. Oh, I worked on the relief a while.

Q. How long? A. About two months.

Q. That is, during the months of June and July? A. Well, quite a while after that.

Q. Into August? A. Well, I worked down here at Bakerville, in Cochise Road.

Q. Is that in August? Did you work on relief after August, 1935? A. Well, I don't know for sure just what date it was, but I worked on that there project of paving Bakerville and Cochise Road.

Q. That was sometime in the summer of 1935? A. I believe it was; it was more towards the fall.

Q. Around September, '35? A. Yes, I think so; something like that.

Q. How many days work a month did you get during that period there from June until September? A. I believe it was—let me see. I put in two periods: 11 days at each period.

Q. After you quit relief work did you get a job anywhere? A. At the Shattuck Denn.

Q. When was that? A. That was in '36.

Q. What month in '36? A. December.

Q. December of 1936? A. Yes, sir.

Q. What employment did you have during the period from September, 1935, until December, 1936? A. Well, I had a ranch; that's all.

Q. You had a ranch. Where was that? A. Down in the Valley.

Q. That is, your own ranch? A. Yes, sir.

Q. Are you living there at the present time? A. Yes, sir.

Q. How large a ranch is that? A. 320 acres.

Q. Do you derive any income from that ranch? A. Well, very little.

Q. Did you derive any income from it during that period of approximately one year, from September, 1935, to December, 1936? A. Well, I raised beans and tomatoes and a few cows.

Q. And you went to work, you say, in December of 1936? A. Yes, sir.

Q. Do you know what date that was? A. I think it was around the 17th or 18th of December.

Q. Of December? A. Yes, sir.

Q. What job did you start on with the Shattuck Denn Mining Company? A. Well, I was hired out as a timberman, but I worked 7 days as a mucker.

Q. What pay did you get for the first 7 days? What rate were you on,—timberman's rate? A. No, sir; mucker's rate.

Q. What was that at that time? A. Well, I can't remember that for sure.

Q. In excess of $5.00? A. I think it was.

Q. A day? A. Something like that.

Q. And then after the 7 days were up, did you go on as a timberman? A. No, sir, as a miner.

Q. As a miner? A. Yes, sir.

Q. What rate did you start at at that time? A. I think it was better than $5.00; I don't just——

Q. Was it in excess of $5.50? A. I don't know whether the rates has been changed; I don't remember.

Q. How many days a week were you working the first three or four weeks when you started in with the Shattuck Denn? A. 7 days a week.

Q. 7 days a week? A. Yes, sir.

Q. Have you worked continuously for the Shattuck Denn Mining Company since around December 17th or 18th, 1936? A. Yes, sir.

Q. What is your present job with the Shattuck Denn Mining Company? A. Mining.

Q. What is your rate of pay? A. $5.48.

Q. $5.48? A. Yes, sir.

Q. How many days a week? A. 6, now.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What pay rate were you receiving at Phelps Dodge when you left? A. It seems to me like it was $4.95.

Q. You were employed as a miner? A. Yes, sir.

Q. How long have you been classified as a miner at Shattuck Denn? A. Well, after the first day, or, after the first 7 days.

Q. Since the second week in December of 1936? A. I believe so.

Q. Which job do you consider preferable, the one in which you are now working, or the one you had with Phelps Dodge? A. Well, there ain't much difference.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. William Windsor.

WILLIAM WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: William Windsor.

Direct examination:

Q. (By Mr. Persinger) Mr. Windsor, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. I first went to work in the district in 1925.

Q. And how long did you work that time? A. Three months; the summer of '25.

Q. Were you going to school then? A. Yes, sir.

Q. And after you finished school, when did you first go to work for the corporation? A. I went back to work in the mine in the Spring of '26.

Q. And you worked how long that time? A. Up until November of 1931.

Q. There was a general layoff then? A. Yes, sir.

Q. When did you go back to work after that? A. September, 1933.

Q. What job did you go back at in September, 1933? A. I hired out as a miner, but in a week I went on as helper, on a motor.

Q. And you worked how long that time? A. Up until the strike.

Q. On the same job? A. No. I went back on the mining job for about a year before the strike was called.

Q. And in June of 1935, what job did you have? A. Mining.

Q. Were you a member of the Union at the time the strike was called? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. About the middle of July.

Q. And between June 10th and the middle of July, were you on the picket line frequently? A. Yes, sir.

Q. After the strike was called off, did you apply for reinstatement with the company? A. I beg your pardon?

Q. After the strike was called off, did you apply for work at the company? A. Yes, sir.

Q. When? A. About the middle of September.

Q. Is that the same year? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. At his office, employment agent.

Q. What time of the day was it? A. It was about 10:00 o'clock in the morning.

Q. Do you remember the day of the week? A. No, I don't.

Q. Anyone else present? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance to go to work; that is all I asked him.

Q. And what did he say? A. He says, "I have taken up a few cases like yours, but they don't know what they want to do about it."

Q. Anything further said at that time? A. No, sir.

Q. Have you been back since? A. I went back another time.

Q. When? A. About two weeks afterwards.

Q. And did you see Mr. Bateman that time? A. Yes, sir.

Q. Where did you see him? A. At his office.

Q. Was anyone else present? A. No.

Q. What time of day was that? A. It was about 10:00 o'clock in the morning.

Q. And what did you ask Mr. Bateman? A. I asked him what was the chance to get my job back.

Q. What did Mr. Bateman say? A. He told me the same thing as before.

Q. Namely, that there had been no disposition made of the cases yet? A. Yes, sir.

Q. Have you applied for work since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 35, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 35.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Mr. Windsor, what did you do after July, 1935? A. I worked out here on a road job.

Q. When did you go to work on that road job? A. About the 16th of July.

Q. 1935? A. Yes, sir.

Q. What was the nature of the work you did out there? A. Oh, just common laborer.

Q. How long did you work there on that job? A. Well, about a year or 14 months.

Q. And who employed you? A. Pleasant-Hasler.

William Windsor—For National Labor Relations Board —Cross.

Q. And you worked on that job continuously for some time—something between a year and 14 months, is that right? A. Yes, sir.

Q. What rate of pay did you receive? A. I started out at 50 cents an hour. Then I was raised to 62½ cents an hour.

Q. How long did you work for 50 cents an hour? A. About 5 months.

Q. The balance of the time you worked for 62½ cents an hour? A. Yes, sir.

Q. That is 8 hours a day? A. Yes, sir—Well, some jobs it is 6 hours a day, and some jobs it is 7 hours a day.

Q. However, you worked 40 hours a week? A. 40 hours a week.

Q. When did you leave the employ of Pleasant-Hasler? A. It was about the 1st of September, in '36.

Q. The first of September, in '36? A. About.

Q. Now, during the time you were working for Pleasant-Hasler, weren't you working, as a general rule, 7 days a week? A. No.

Q. Did you ever work more than 40 hours a week? A. Oh, once in a while, once or twice; once in a while.

Q. Your usual weekly period was one of 40 hours, then? A. Yes, sir.

Q. Now, what did you do after you left their employment? A. I came back to town and I worked 11 days on the relief. Then I was rustling at the Denn and got on there.

Q. When did you go to work for the Shattuck Denn? A. The 2nd day of December, '36—'37—'36.

Q. And you have worked at the Shattuck Denn continuously since that time? A. Yes, sir.

Q. What work did you do when you first went with the Shattuck Denn? A. I was rated as a mucker.

Q. And how long were you on mucker's work? A. About 2 months.

Q. And then what job did you have? A. I took a slusherman, stope; miner's pay.

Q. You are employed at miner's pay at the present time? A. Yes, sir.

Q. And what rate of pay are you receiving at the present time? A. $5.48.

Trial Examiner Kennedy: How much? I didn't hear that.

The Witness: $5.48.

Q. (By Mr. Evans) You are working a 6-day week? A. Yes, sir.

Q. What was the highest rate of pay that you received while you were employed by Shattuck Denn? A. $6.44.

Q. And you were receiving $5.00 per day, as I understand it, when you left the employ of the Phelps Dodge Corporation? A. Yes, sir.

Q. And at that time you were working a 5-day week? A. Yes, sir.

Q. Where were you employed prior to June 10, 1935? A. At the Campbell.

Q. At the Campbell? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Which job do you consider preferable,—the one you had at Phelps Dodge, or the one you now have? A. The one at Phelps Dodge.

Q. Why? A. Because when I go back to work there they will have lifted the blackball from against me, where other-

wise if I got froze out at the Denn I would be through in this district as far as mining employment is concerned.

Trial Examiner Kennedy: Anything further? You will be excused.

(Witness excused.)

ELLIS MERAN SCALES, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Ellis Meran Scales.

Direct examination:

Q. (By Mr. Persinger) Mr. Scales, were you employed formerly by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. In February, '26.

Q. And at that time you worked how long? A. Until June, '36.

Q. Until when? A. June, '36.

Q. '36? A. '35.

Q. You were not laid off during the general layoff in '31 and '32? A. No, sir.

Q. You worked continuously up to the time of the strike? A. Yes, sir.

Q. What job did you have when you started? A. Mucking.

Q. And what job did you have in June, '35? A. Motorman.

Q. What was that rate of pay? A. $5.24.

Ellis Meran Scales—For National Labor Relations Board —Direct.

Q. Were you a member of the Union at the time the strike was called? A. Yes, sir.

Q. You went out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. The 24th of August.

Q. Was that the last day of the strike? A. Yes, sir.

Q. Between June 10th and August 24th, were you frequently on the picket line? A. Yes, sir.

Q. After the strike was called off, did you ever apply for work? A. Yes.

Q. When? A. Oh, between the 24th and 28th of August.

Q. Within a few days of the strike? A. After the strike.

Q. To whom did you apply? A. Bateman.

Q. Where did you see him? A. In his office.

Q. What time of day was that? A. 9:00 o'clock.

Q. In the morning? A. 9:00 o'clock in the morning; yes, sir.

Q. Was anyone else present? A. No, sir.

Q. What did you ask him? A. I asked him how about the job.

Q. What did he say? A. He says, "Well, I don't know." He said he had other boys in the same shoes that I was in, and he couldn't do anything for us.

Q. Was anything further said? A. No, sir.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 36, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 36.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 36.)

Mr. Persinger: The witness is with you.

Ellis Meran Scales—For National Labor Relations Board —Cross.

Cross examination:

Q. (By Mr. Kitchel) Mr. Scales, what day did you say was the last day you were in the picket line? A. The 24th of August.

Q. Was that the day that the picket line was disbanded, or was there picketing on that day? A. I picketed that morning.

Q. Do you remember what day of the week that was? A. No, sir.

Q. You say that you were in the picket line practically every day? A. Yes, sir.

Q. Were you on relief during that period? A. Yes.

Q. How many days a month did you get during the period you were on relief? A. Well, it varied; 5 sometimes, and up to 11.

Q. How long did you stay on the relief? A. I was on relief about a year and a half; a year and two months.

Q. During that period of a year and about two months, did you have any other employment? A. Three months, for a leaser.

Q. When was that, Mr. Scales? A. Well, it was eight months after the strike; I couldn't say when it was.

Q. 8 months after the strike? A. Yes.

Q. That is, 8 months from June 10, 1935? A. Yes, sir.

Q. That would be in February of 1936? A. Yes, sir.

Q. For whom did you go to work at that time? A. McKenna.

Q. Jim McKenna? A. Yes, sir.

Q. What was your job with Mr. McKenna? A. Trammer.

Q. How much were you paid? A. $4.48, I believe.

Q. $4.48 a day. How many days a week? A. Six.

Q. Six days a week. And you worked continuously for Mr. McKenna from sometime in February, 1936, for a

period of three weeks, did you say? A. Two months and a half.

Q. Two months and a half? A. Yes, sir.

Q. Were you laid off at the end of that time? A. Yes, sir.

Q. That would be sometime around the 1st of May, 1936; at the end of April, or the first part of May? A. Yes, sir.

Q. What was your next job, Mr. Scales? A. I went working on a contractor, Pleasant & Hasler,—W. P. A.

Q. When did you start that? Was that right after you left Mr. McKenna's lease? A. I couldn't say whether it was right after or not.

Q. Well, how soon after do you estimate it was? A. Oh, a few weeks.

Q. What job did you have with Pleasant & Hasler Construction Company? A. Common laborer.

Q. What pay did you get? A. Fifty cents an hour.

Q. How many hours a day? A. Eight hours a day.

Q. How many days a week? A. Five.

Q. How long did you work on that job? A. Four months.

Q. That would take you, then, up until August of 1936? A. A little later, I believe.

Q. What was your next job? A. Another contractor out at Cochise; the same rate of pay.

Q. Same rate of pay? A. Yes.

Q. Were you working for the Pleasant & Hasler Construction Company? A. No; another company. I can't think of the name of it.

Q. How long did you work for them? A. A couple of weeks.

Q. Then what was your next job? A. I came back to Bisbee and rustled at Denn.

Q. Did you get a job? A. Yes, sir.

Q. When was that? A. The 28th day of October.

Q. 1936? A. '36; yes, sir.

Ellis Meran Scales—For National Labor Relations Board —Cross.

Q. Isn't it true, Mr. Scales, that from the time you went to work for Mr. McKenna in February of 1936, with the exception of perhaps one or two weeks intervals, between these jobs that you have stated, until October 28, 1936, you were continuously employed? That is, you had employment almost that entire period? A. Well, there was the W. P. A.

Q. Well, that wasn't relief work you were doing? A. Yes, sir.

Q. When you were working for Pleasant & Hasler Construction Company? A. Yes, sir.

Q. But it was regular employment? In other words, it was six days a week? A. Five days a week.

Q. Five days a week? A. Yes.

Q. What job did you start on with the Shattuck Mining Company in October of 1936? A. Mucking.

Q. Do you remember what your rate of pay was at that time? A. $4.84.

Q. How many days a week were you working? A. Six one week and seven the next week.

Q. That is, they alternated? A. Yes.

Q. Are you employed at the present time at the Shattuck Denn Mining Company? A. Yes, sir.

Q. Have you been employed steadily by them since October 28, 1936? A. Yes, sir.

Q. What is your present job with the Shattuck Denn Mining Company? A. Finley operator.

Q. What is your rate of pay? A. $5.76.

Q. How many days a week are you working? A. Six.

Q. Have you ever been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. What shaft were you working in at the time you walked out on June 10, 1935? A. Campbell.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Ellis Meran Scales—For National Labor Relations Board —Cross.

Examination by the Trial Examiner:

Q. (By Mr. Trial Examiner Kennedy) You are now getting $5.76? A. Yes, sir.

Q. When you left Phelps Dodge what did you get? A. $5.24.

Q. Which is the better job? A. Well, the Phelps Dodge is the better job.

Q. Why? A. Well, it's just more of a convenient place to work, more steadier, a bigger company.

Q. Have you been employed steadily since you went to work for Shattuck Denn? A. Yes, sir.

Q. In the last year you have not had any less steady employment than you had with Phelps Dodge, have you? A. No, sir.

Q. How long have you know about this Shattuck Denn Company? A. Well, since '25.

Q. Is that the first time you came into this district? A. Yes, sir.

Q. Was it operating at that time? A. Yes, sir.

Q. What type of mineral do they mine there? A. Copper, silver and gold.

Q. Much the same thing they mine at Phelps Dodge? A. Copper, silver and gold.

Q. Is there any difference, as far as you can observe, in the safety standards of the two companies? A. Well, no, sir.

Trial Examiner Kennedy: That is all.

Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: No more.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Erkkila.

Frank Erkkila—For National Labor Relations Board —Direct.

FRANK ERKKILA, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?
The Witness: F. H. Erkkila.

Direct examination:

Q. (By Mr. Persinger) Mr. Erkkila, were you formerly employed by the Phelps Dodge Corporation? A. Am I formerly?

Q. Were you formerly employed? A. Yes, sir.

Q. When did you first go to work for them? A. Around about June 1, '34.

Q. And you worked how long? A. About a year, until June.

Q. What job did you start in at? A. Mucking.

Q. What job did you have in June, '35? A. Mining.

Q. In June, '35, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike with the union? A. Yes, sir.

Q. Were you on the picket line during the strike? A. Yes, sir; every chance I had.

Q. What was the last day you were on the picket line? A. During the last week of the strike.

Q. After the strike was over did you apply to the company for reinstatement? A. Yes, sir.

Q. When? A. On or about November 1st.

Q. Had you rustled before that? A. Well, outside on the ground. I never spoke to them.

Q. In other words, you had waited outside the employment office? A. Yes, I waited outside.

Q. But you had not spoken to Mr. Bateman? A. No.

Q. Until some time in November? A. Yes, sir.

Q. And where did you speak to Mr. Bateman in November? A. In his office.

Q. What time of day was that? A. Well, about the forenoon.

Q. Was anybody else present? A. Not that I noticed.

Q. What did you ask him? A. I asked him if there was any chance for a job.

Q. What did he say? A. He said, "Well, you were on the picket line, weren't you?"

I said, "A few times."

Then I told him I needed a job pretty badly; there was nobody in the family that was working, and asked him if he knew of any place where I could get a job.

He mentioned Miami Copper Company, and said there might be a chance over there.

Well, I thanked him and walked out.

Q. Have you been back since? A. I haven't been back since, no.

Mr. Persinger: I offer as Board's Exhibit No. 37 in evidence the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 37.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) You have not been an employee of the Phelps Dodge Corporation since June 10, 1935, have you, Mr. Erkkila? A. No, I haven't.

Q. What did you do after August 24, 1935, in the way of working any place? A. No, I never worked; only stayed on the folk's ranch.

Q. You stayed on your family's ranch? A. Yes, sir.

Q. And you worked on the ranch, did you? A. Yep.

Q. What type of work did you do on the ranch? A. Well, a little farming and ranching.

Q. That is work that you had done from time to time in the past when you were not working in the mines, was it not? A. Yes, that's the way I was raised.

Q. That is the work you were raised on? A. Yes.

Q. When did you first get a job after that? A. It was some time the last of February for the Shattuck Denn in '36.

Q. The last of February, 1936? A. Yeh.

Q. As a matter of fact, didn't you go to work for the Shattuck Denn in January of 1936? A. Not that I can recall.

Q. It might have been January of 1936? A. It might have.

Q. What kind of job did you have when you first went to work for the Shattuck Denn? A. I was mucking.

Q. And are you still employed by the Shattuck Denn? A. Yes, sir.

Q. What type of job do you have at the present time? A. Mining.

Q. What rate of pay are you receiving? A. $5.48.

Q. And you have been continuously employed since January of February of 1936? A. Yes, sir.

Q. But the Shattuck Denn? A. Yes, sir.

Q. What job did you have prior to June 10, 1935, with Phelps Dodge Corporation? A. You mean what job was I on June 10th?

Q. Yes. A. Mining.

Q. Were you mining? A. Yes.

Q. Did you receive mining pay? A. Yes, sir.

Q. You were not mucking? A. No.

Q. And where were you working, what shaft? A. Campbell shaft.

Q. At the Campbell shaft? A. Yes, sir.

Q. Now, then, between June 10, 1935, and either January of February of 1936, as I understand your testimony, you had no job with anyone? A. No, I didn't.

Q. Did you work on relief at all? A. No.

Q. You were not engaged in any relief work at all during that period? A. No.

Q. You were working—your work was confined to work that you did on your family's ranch? A. Yes.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Which job do you prefer? The one you now have, or the one you had at Phelps Dodge when you left Phelps Dodge? A. Well, I would prefer Phelps Dodge on account of being more dependable, because I was born and raised—no, not born—I was raised here, not born here.

Q. More what? A. More dependable job.

Q. You got $5 a day at Phelps Dedge, is that right, when you left? A. Yes, I got $5 when I left.

Q. And you are getting more than that now? A. Yes.

Q. Do you want to go back at $5 a day? A. Well, that would be more dependable, I suppose, if I would go back.

Q. You would rather go back at $5 a day than stay where you are at $5.48? A. Yes.

Q. Has your work at Shattuck Denn been steady since you have gone there? A. Yes, I have been there quite steady.

Q. How many men do they have employed at Shattuck Denn? That is, all told? A. Well, I couldn't say that for sure, but on our shift there is around 60 or 70.

Q. Sixty or 70? A. Yes, sir.

Q. What do they run, three shifts? A. Two shifts.

Q. Two shifts? A. Yes.

Q. Does that make the total employees in the mine around 150, not more than that? Is that what I am to understand? A. Well, about 150, I suppose.

Trial Examiner Kennedy: That is all. Anything further?

Recross examination:

Q. (By Mr. Evans) Mr. Erkkila, you have discussed your testimony in this case with others, have you? A. Well, you mean the case on this——

Q. You have talked over with others what your testimony was going to be in this case? A. Well, I have talked—I thought they was coming up against our case.

Q. As a matter of fact, haven't you discussed with other members of the union out here in the hallway your testimony, what it would be in this case? A. Yes, I believe I have.

Q. And they told you that one of the questions that the Trial Examiner would ask you would be whether you preferred to work for the P. D. or the Shattuck Denn, didn't they? A. Yes, sir.

Q. And it was suggested to you that you should, in reply to that, state that you preferred to work for the P. D.? A. Well, not only suggested, but I would prefer that because that would be a more dependable job.

Q. And it was also suggested to you that it would be a more dependable job, was it not? A. No, sir, it wasn't.

Q. You thought of that all by yourself, did you? A. I thought of that before the case came on trial.

Q. As a matter of fact, Mr. Erkkila, the Shattuck Denn has been operating here for a good many years, has it not? A. Yes, sir.

Q. And they are operating at the present time, are they not? A. Yes, sir.

Q. They have just opened up a new large ore body, have they not? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

LUKE SERTICH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Luke Sertich.

Direct examination:

Q. (By Mr. Persinger) Mr. Sertich, were you formerly employed by the Phelps Dodge Corporation? A. Yes, I have.

Q. When were you first employed by them? A. In the Spring of 1924.

Q. And you were there how long? A. Until August 15, 1930.

Trial Examiner Kennedy: I didn't get those dates. What was the first date?

The Reporter: 1924.

Trial Examiner Kennedy: And the second date?

The Witness: 1930.

Q. (By Mr. Persinger) And at that time there was a general lay-off, was there? A. Yes, there was.

Q. When did you go back to work after that? A. The first part of September, 1933.

Q. And you worked how long that time? A. Until the strike.

Q. What was your job when you started in '24? A. A miner.

Q. And what was your job when you went back to work in '33? A. Miner.

Q. What was your job in June, '35? A. I was a track man.

Q. A what? A. Working on the track on a pipe. I was promoted to a track man. I worked on pipes on the ditches.

Q. What rate of pay did you receive as a track man? A. I believe it was $5.24 at that time.

Q. And the time of the strike were you a member of the union? A. I was.

Q. Did you go out on strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the last day that you were on the picket line? A. Just about a week before the strike was called off.

Q. And when the strike was called off, did you apply for reinstatement at any time? A. I did later.

Q. When? A. In about the first part of July, 1936.

Q. Well, now, why were you waiting so long? A. Because I went to the C. C. Camp.

Q. And in July, '36, to whom did you apply? A. To Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. What time of day was that? A. Between 9:00 and 10:00 o'clock in the morning.

Q. Was anyone else present? A. There was two more C. C. boys from the camp with me, and there was a man sitting at the desk at the time filling out an application for the work.

Q. And what did you say to Mr. Bateman? A. I said to Mr. Bateman, "Is there any chance for me to get a job back?"

And he shook his head and says, "No chance; nothing doing."

Q. Anything further said? A. Not that day. I walked out.

Q. Have you been back since? A. No.

Mr. Persinger: I offer as Board's Exhibit 38 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 38.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Sertich, have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, not by Phelps Dodge Corporation.

Q. And you are not employed at Phelps Dodge Corporation at the present time, are you? A. I am not.

Q. You stated that you were in the picket line until about one week before the picket line was called off? A. I was.

Q. What date was the picket line called off? A. Well, I ain't certain. I think it is about August 24th.

Q. And you say that you were not in the picket line after the 17th of August? A. I don't think I was.

Q. Did you leave the district at that time? A. No, I didn't feel good.

Q. Did you work on relief during the period from June 10, 1935, to August 17th? A. I have.

Q. 1935? A. I have.

Q. What did you do after you quit the picket line, as you say? A. I went to apply to the C. C. Camp for C. C. work.

Q. And did you go to a C. C. C. Camp? A. I did.

Q. When did you go? A. I went there August 28th.

Q. August 28, 1935? A. 1935.

Q. And you stayed there until July? A. No, I stayed there until September, the 5th or 4th, 1936.

Q. You were there the full time? A. I was there right along.

Q. Where was the camp? A. I was first at Sunnyside in Huachuca, Arizona.

Q. How long were you there? A. About two weeks.

Q. Then where did you go? A. To Naco.

Q. Well, then, from August 28, 1935, until September of 1936, just about a year? A. A year and a week.

Q. A year and a week? A. Yes.

Q. That you were in the C. C. C. Camp. And you were there the whole time? A. I was.

Q. And it was during the time while you were in the C. C. C. Camp that you had this talk with Mr. Bateman? A. Yes, sir.

Q. What did you do when you left the C. C. C. Camp in September of 1936? A. Before I left the C. C. C. Camp in September, '36, I asked the Captain, the Commanding Officer, for permission to go out somewhere and look for a job, which I did at the same time when I was asking the Captain to give me permission to go and see Mr. Bateman, because we couldn't go out of camp without permission, on any kind of personal business, and right after I seen Mr. Bateman I asked the Captain to give me permission to go to see the employment agent at the Shattuck Denn mine, which he did. And I registered for a job and was notified by letter, because we couldn't accept—we couldn't get no discharge out of a camp without a letter of a job, but we already

had the job, and Mr. Flynn sent me a letter the first part of September.

Q. Who was Mr. Flynn? A. Mr. Flynn is General Manager of the Shattuck Denn.

Q. And when did you commence work for the Shattuck Denn? A. Around about the 5th of September.

Q. 1936? A. 1936.

Q. Now, have you been employed by them continuously since that time? A. Yes, sir.

Q. What job did you start on at the Shattuck Denn? A. Around about the 5th of September.

Q. 1936? A. 1936.

Q. Now, have you been employed by them continuously by them since that time? A. Yes, sir.

Q. What job did you start on at the Shattuck Denn? A. Miner.

Q. And what pay did you receive? Do you remember? A. Well, the pay was $4.95.

Q. $4.95? A. $4.95, at that time.

Q. What is the highest rate of pay you have gotten with the Shattuck Denn since you have been with them? A. $6.52.

Q. And what was the rate of pay that you were getting when you left the employ of the Phelps Dodge Corporation? A. $5.24.

Q. $5.24? A. Yes.

Q. And how many days a week were you working for the Phelps Dodge around the time that you left them? A. 6 days a week.

Q. 6 days a week for the Phelps Dodge? A. Yes, for the Phelps Dodge, at the time of the strike.

Q. Wasn't the Phelps Dodge on a 5 day basis then? A. No, not that I know of. I was working on the graveyard shift.

Q. 6 days a week? A. Yes, sir.

Q. You are certain of that? A. I believe I was.

Q. Are you employed at the present time by the Shattuck Denn Mining Company? A. I am.

Q. As a miner? A. As a timberman.

Q. As a timberman? A. Yes, sir.

Q. What is your present rate of pay? A. $5.76.

Q. With reference to that talk you had with Mr. Bateman in the early part of July, 1936,—was that the only conversation you had with him? A. That is the only time I had ever talked to Mr. Bateman about anything, because I wasn't in town.

Q. What shaft were you working in when you quit the Phelps Dodge? A. At the Junction.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did your pay at the Shattuck Denn reach $5.24 a day, or pass that much? A. Well, about that much. It was the first day we got it, I believe, was around January, 1937; I am not sure.

Q. Around January, '37? A. '37, when the first raise took effect.

Q. And what was that raise? A. Oh, at first my raise was 25 cents, or 26 cents; it was 5 per cent.

Q. What did it equal a day? How much were you getting after that raise? A. $5.24, I believe.

Q. You got up to $5.24 at Shattuck Denn in January, 1937? A. January, 1937, I believe.

Q. And since January, 1937, you have made $5.24 or more? A. Or more. We got up as high as $6.52.

Q. As high as $6.52, and now it has gone down? A. Gone down again.

Q. To what? A. It has dropped down to $5.50 for miners, and $5.76 for timbermen, and I don't remember what the muckers get.

Q. Now, $5.24 in January, '37. When did it go up again? A. It went up gradually, almost every month.

Q. Every month you got a raise? A. Almost every month, until last August, I believe—no, last July sometime, when the first raise came again, I mean, the first drop.

Q. The first drop. What was it at the peak, then? A. $6.52.

Q. $6.52. And that was at what time,—in March? A. No, in July, last July.

Q. In July, '37? A. Yes, sir.

Q. And then it started going down? A. Started going down gradually, dropped. Two or three cuts already.

Q. And where is it now, as far as you are concerned? A. $5.50 for miners.

Q. And what are you drawing? A. $5.76.

Q. Now, how are these raises and drops worked at Shattuck Denn? A. They work according to whenever Phelps Dodge post a notice that a raise is in effect. We get the raise at the Denn and every time the Phelps Dodge make a cut we get cut also.

Q. Is that due to any union contract that your union has? A. No, we have no union contract at the Denn.

Q. You have no union contract, just follow the pay scale of Phelps Dodge? A. Of Phelps Dodge.

Q. Now, which job would you rather have: The $5.76 you are now getting, or the job you had at Phelps Dodge when you left Phelps Dodge? A. I would rather have a job with Phelps Dodge.

Q. Why? A. For the reason the Phelps Dodge is a large corporation and their mines are more of a steady work, while the Denn is a little corporation and it will probably go flooey any time.

Q. How long has the Denn been running? A. Well, they have been running for a year and a half now.

Q. How long has the corporation been in existence? A. Oh, it has been quite a while; I don't know.

Q. How long do you think it has been? A. I don't know; it has been here ever since I have been here.

Q. How long has that been? A. 15 years.

Q. It has been a corporation in existence here for 15 years, is that right? A. Yes, sir.

Q. And has it been operating steadily all that time? A. No, it has not.

Q. You know that it has been operated steadily for the last year and a half? A. For the last year and a half, yes.

Q. Has the Phelps Dodge been operating steadily all during that time? A. Yes, sir.

Q. All that time? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: May I ask you one question, Mr. Sertich?

The Witness: Yes, sir.

Further cross examination:

Q. (By Mr. Kitchel) Has the Phelps Dodge operations during that period remained the same; that is, the payroll remained the same? A. No, it didn't. There was also slack times at Phelps Dodge, but there was no shutdown.

Q. During the period of the so-called depression, was there much of a payroll? A. Well, I don't know about during the depression. I stayed out of here almost three years —not quite three years.

Q. Were you let out at that time? A. I wasn't here—I went to California.

Q. When you left—— A. I left August 15, 1930.

Q. When you left, were you laid off at that time? A. No, I quit.

Q. At that time, were they not laying off a great many men? A. They was just getting 5 days a week then, when I quit. The time was getting slack.

Q. Were there many men being laid off? A. There was.

Q. Wasn't it at that same period of time that the Shattuck Denn was shut down? A. I don't remember, because I left the camp then.

Q. Well, you said it had been shut down? A. The Shattuck Denn has been shut down.

Q. When? A. It just opened up here, just about when the strike was called; just then they opened up, and the first men that was ever hired was the strikers, into the Denn, that I remembered.

Q. Was the Shattuck Denn operating when you left here in 1930? A. It was.

Q. To your knowledge was it operating for a good many years continuously prior to that time? A. Possibly they were prior to my time.

Q. Do you know? A. I know they were.

Q. That is all. A. But they was just up and down; there was only some few men working most of the time.

Q. They laid off, and then they increased their force? A. They laid off, and then increased their force.

Q. Did the Phelps Dodge ever do that? A. The Phelps Dodge did also.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will be in recess until 1:30.

(Thereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m. of the same date.)

Merrell Ernest Johnson—For National Labor Relations Board—Direct.

AFTER RECESS.

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Johnson.

MERRELL ERNEST JOHNSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Merrell Ernest Johnson.

Direct examination:

Q. (By Mr. Persinger) Mr. Johnson, were you formerly employed by Phelps Dodge Corporation? A. Yes.

Q. When were you first employed? A. Well, I was first employed by the C. & A. Company in '27 or '28.

Q. And you worked for the C. & A. how long? A. Up until the merger.

Q. And then after the merger did you work for Phelps Dodge? A. Yes, sir.

Q. When did you first work for them? A. In 1934.

Q. What was your job in 1934? A. Well, I started out as a tool nipper, and then I asked to get off tool nipper; then from tool nipper I went to traveling behind the mucking machine. From behind the mucking machine I went to swamping on the motor. From there I went over to the Cole shaft as toplander helper.

Q. What was your rate of pay at the Cole shaft? A. Mucker's wages.

Q. How long did you work? Up to what time? A. Up to the strike.

Merrell Ernest Johnson—For National Labor Relations Board—Direct.

Q. At the time of the strike were you a member of the union? A. No, not exactly.

Q. Did you go out on strike with the union? A. Yes, sir.

Q. Were you on the picket line? A. Three or four times.

Q. After the strike was over did you apply for reinstatement? A. Yes, sir.

Q. About when? A. A week after.

Q. To whom did you apply? A. To the employment office.

Q. To whom? A. Mr. Bateman.

Q. What time of day was that? A. Well, I went up in the morning first and he told me to come back, that anyone who hadn't registered to come back in the afternoon.

Q. When you went up in the morning was anyone else there? A. Yes, sir.

Q. How many? A. There was a whole crowd standing out in front of the employment office.

Q. And this was outside the office? A. What is that?

Q. This was outside the employment office? A. This was outside the employment office.

Q. Where was Mr. Bateman? A. He was up on those little steps, or whatever it is—that platform.

Q. Did you speak to Mr. Bateman? A. Not then, no.

Q. What did Mr. Bateman say? A. I never spoke to him then.

Q. Did he say anything? A. No.

Q. And when did you come back? A. I came back about 1:00 o'clock.

Q. Did you see Mr. Bateman then? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. And what did you say to him then? A. I said, "Mr. Bateman, is there any use in me reinstating?"

Q. And what did he say? A. He said, "No, there is not even any use of you looking for a job."

Q. Was there anything further said at that time? A. And he said, "You know the reason why."

Q. Anything else? A. That is all.

Q. Have you applied for work since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 39, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 39.)

Mr. Persinger: The witness is with you.

Cross examination:

Q. (By Mr. Kitchel) How much were you getting when you were working for the Phelps Dodge Corporation just prior to June 10, 1935, Mr. Johnson? A. I was getting mucker's wages.

Q. What was the rate at that time? A. $4.40.

Q. $4.40? A. Yes, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. No.

Q. Are you employed at the present time? A. Yes, sir.

Q. Who by? A. Shattuck & Denn.

Trial Examiner Kennedy: Just a minute. I have heard several of these witnesses refer to this as Shattuck & Denn. Is that the correct name?

Mr. Kitchel: No; Shattuck-Denn.

Trial Examiner Kennedy: Shattuck-Denn Mining Company?

Mr. Kitchel: Yes.

Q. (By Mr. Kitchel) What day was this you had this talk with Mr. Bateman? A. Well, it was a week after the strike; I couldn't say what day it was.

Q. Well, when did the strike end? A. August 24th.

Q. Do you know what day of the week that was? A. No.

Q. Were you in the picket line the last day the picketing was done? A. No, sir.

Q. You started to say, on direct examination, that you went in the morning? A. I did.

Q. And that Mr. Bateman said to come back later on? A. He did.

Q. I thought you said he said nothing from the platform there? A. Well, he didn't say nothing to me.

Q. What did he say to the crowd? A. He said, "Any of those who haven't registered, come back at 1:00 o'clock."

Q. Then you did go back that afternoon? A. I did.

Q. You would figure, then, that that was about the first of September? A. Somewhere around there; yes.

Q. Were you on relief during the time that the picket line was established? A. No.

Q. Did you do any work during that time? A. No.

Q. What was the first employment that you obtained after June 10, 1935? A. There was two days—two or three days—before I was employed on the Shattuck Denn, and I worked on the C. W. A.

Q. The Shattuck Denn, then, was the first employment you had other than relief? A. Yes.

Q. During that period? A. Yes.

Q. Did you only work two days on relief? A. Two or three days; yes.

Q. How did you support yourself in the meantime? A. I was living with my dad and mother.

Q. You were born and raised in Bisbee, were you not? A. I was.

Merrell Ernest Johnson—For National Labor Relations Board—Cross.

Q. Has the Shattuck Denn Mining Company been working in the community the time you have been here? A. Well, they have been working off and on; yes.

Q. What do you mean by "off and on"? What do you mean by "off"? A. They have been shut down for several years here.

Q. What years? A. I don't know what years.

Q. Have you got any idea, from 1912 to 1938, what years they were shut down? A. I haven't; I never paid much attention to it.

Q. You say you went to work for the Shattuck Denn. What was the date of that? A. That was in '35.

Q. 1935? A. No, '36.

Q. Do you know what month? A. No, sir. I can't remember that.

Q. You haven't any idea what month you went to work? A. It was in the first part of the year.

Q. January? A. No, I don't think so.

Q. February? A. Either February or March.

Q. What job did you get at the Shattuck Denn when you started in? A. Well, I was started out as trammer.

Q. What was your rate of pay? A. Mucker's wages.

Q. What were the mucker's wages at that time? A. $4.40, I think.

Q. The same as you were getting at the time you quit the Phelps Dodge? A. Yes.

Q. Have you worked continuously for the Shattuck Denn Mining Company since February, 1936? A. I have.

Q. What is your present job with that company? A. Steel Sharpeners helper.

Q. What is your rate of pay on that job? A. $5.78.

Q. Did you ever have occasion to talk with the employment agent of the Phelps Dodge Corporation after this particular interview that you have testified to? A. No.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You are now drawing $5.78 a day? A. $5.76. I made a mistake.

Q. $5.76? A. Yes, sir.

Q. Have you ever joined the union? A. Yes, I joined the union when I first went over there and dropped out.

Q. When you first went over where? A. Over at the Denn.

Q. That is about a year ago? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further? (No response.)

(Witness excused.)

Mr. Persinger: Mr. Gerhardt.

GEORGE GERHARDT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: George Gerhardt.

Direct examination:

Q. (By Mr. Persinger) Mr. Gerhardt, were you formerly employed by the Phelps Dodge Mining Company? A. Yes, sir.

Q. When were you first employed? A. Employed in 1912, the first time I worked for them.

Q. How long did you work that time? A. I worked up until along September of 1913.

Q. When were you employed next? A. 1915; along in June some time—the month of June.

Q. Until when? A. Up until the strike.

Q. No lay-off during that period? A. I was off three months during that period.

Q. In what year? A. In '22.

Q. And you haven't had a lay-off since '22? A. No. I worked steady from '22 up until the strike.

Q. What job did you have just before the strike? A. Working in the steel shop sharpening steel.

Q. What was your rate of pay? A. $5.24.

Q. $5.24? A. Yes.

Q. You went out on strike? A. Yes.

Q. How long had you been receiving the rate of $5.24 before the strike? A. Something like about three months, I think; something like that.

Q. What had been your job prior to that time? A. Before that I was sharpening steel.

Q. What was your rate of pay at that job? A. $5.93.

Q. Were you ever told by anyone why your rate had been reduced? A. No, they never did tell me why.

Q. Who reduced it? A. Jim Hart.

Q. What was his position? A. He was foreman of the shop.

Q. You went out on strike? A. Yes, sir, I went out on strike.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last time you were on the picket line? A. The 23rd of July was the last day I was on the picket line.

Q. After the strike did you apply for work? A. I was up once in September.

Q. And to whom did you apply? A. Well, I was up to the office there, and Mr. Bateman said there was nothing doing, so I never talked to him at all. I went on back, and never did go back any more.

Q. Was he speaking to you, or was he speaking to a group? A. Well, he was speaking to several other fellows there.

Q. Were there any strikers in the group? A. Not that I know of. There was a bunch of strangers there; I didn't know any of them.

Q. He said there was nothing doing? A. He said there was nothing doing, and I never talked to him at all; never asked him any more.

Mr. Persinger: I offer as Board's Exhibit 40, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 40.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) When was it, Mr. Gerhardt, that you saw Mr. Bateman? A. Along about the middle of September sometime.

Q. Of the year 1935? A. 1935, yes, sir.

Q. You say the last time you were on the picket line was about July 30th? A. July 3rd.

Q. Oh, July 3rd? A. Yes.

Q. 1935? A. Yes, 1935.

Q. And did you leave the day after that? A. No, sir, I have been there continuously all the time.

George Gerhardt—For National Labor Relations Board —Cross.

Q. Have you been employed at all since that time? A. Not excepting on W. P. A. work, relief work.

Q. You haven't worked for anyone except on relief jobs? A. No, sir; I haven't worked no job outside at all.

Q. And have you received relief work rather continuously since July, 1935? A. Well, I have been on relief continuously ever since 1935, since I came out on strike.

Q. Well, we will take the year 1935, the balance of the year 1935. About how many days a week, or a month, were you working on relief? A. Well, sometimes I worked 11 days out of the month. That is about the most we ever did get, 11 days out of the month, and sometimes I got less than that.

Q. Is that true also for the years 1936 and 1937? A. 1936 and 1937; I have been on direct relief for the last year.

Q. For the last year? A. The whole last year.

Q. Not doing relief work? A. They put me on direct relief.

Q. May I ask why you were put on direct relief? A. Well, I have got a bad knee, and it gives away all the time.

Q. When you are doing the work? A. Yes, certain kinds of work; certain kinds of work I can do, and certain kinds I can't.

Q. When were you born, Mr. Gerhardt? A. What is that?

Q. I say, when were you born? A. When were I born?

Q. Yes. A. May 15, 1875.

Q. 1875? A. Yes.

Q. You are now approximately 63 years of age? A. Pretty near it; I will be in May.

Q. You were working in the surface shops as a steel sharpener? A. Yes, sir.

Q. Mr. Reifsnider is in charge of those shops, is he? A. He is Master Mechanic, yes.

Q. And he was Master Mechanic in 1935, is that right? A. Yes.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Yes, I have one question.

Redirect examination:

Q. (By Mr. Persinger) How long have you had a bad knee, Mr. Gerhardt? A. I got that knee hurt in 1913.

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want your old job back with Phelps Dodge? A. Yes, I would like to have it back.

Trial Examiner Kennedy: That is all. Anything further of this witness?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

WILLIAM GRAHAM, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: William Graham.

Direct examination:

Q. (By Mr. Persinger) Mr. Graham, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed there? A. In 1928.

Q. Was that with Phelps Dodge, or C. & A.? A. Phelps Dodge.

Q. And how long did you work? A. About a year and a half.

Q. And you returned to work when? A. In 1934.

Q. What month? A. In June.

Q. Did you work after 1934? A. One year.

Q. Did you go out on strike? A. Yes, sir.

Q. At the time of the strike were you a member of the Union? A. Yes, sir.

Q. What was your job just prior to the strike? A. Pocket man.

Q. What rate of pay was that? A. $4.40.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. What was the last day you were on the picket line? A. August 24th.

Q. When was the strike called off? A. The night of August 24th.

Q. Since the strike, have you applied for work with the company? A. I have.

Q. When? A. The first week in September.

Q. You mean of the same year as the strike? A. Yes, sir; '35.

Q. To whom did you apply? A. To Mr. Bateman.

Q. Where? A. At the employment office—Phelps Dodge employment office.

Q. What time of day? A. About 9:00 o'clock in the morning.

Q. Do you know what day of the week? A. No, I don't.

Q. Was anyone else present? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked Mr. Bateman if there was any chance of going to work.

Q. What did he say? A. He told me that the committee had to pass on all of the men that were hired, and the committee would not pass on any man that came out on strike.

Q. Did he tell you what committee? A. He did not.

Q. Was anything else further said at that time? A. That is all.

Q. Have you applied since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 41 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 41.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Have you ever made application to the employment agent of Phelps Dodge Corporation since that talk with Mr. Bateman that you have just referred to? A. I have not.

Q. Have you been an employee of Phelps Dodge Corporation at any time since June 10, 1935? A. I have not.

Q. Are you employed at the present time? A. I am.

Q. By whom? A. Shattuck Denn.

Q. How long have you lived in the Bisbee district, Mr. Graham? A. 29 years, 11 months.

Q. Have you been here most of that time? A. I have.

Q. Do you remember any time during that period when the Shattuck Denn Mining Company was not here? A. Do you mean not here, or closed down?

William Graham—For National Labor Relations Board —Cross.

Q. Well, has the Shattuck Denn Mining Company been in existence, to the best of your knowledge, since your birth? A. Yes, it has been in existence.

Q. Where do you live at the present time? A. 941-B, Tombstone Canyon.

Q. Is that where you lived in July and August of 1935? A. Yes, sir.

Q. Were you in the picket line every day? A. Practically every day. I don't remember any that I missed.

Q. Were you ever held for questioning in any incident involved at the time of the strike? A. I was detained about an hour and a half in the Lowell Jail one night.

Q. What for? A. For sitting on the sidewalk.

Q. That was the only time that you were in during that period? A. That is all.

Q. Did you ever have any connection with that car that was blasted up at Tombstone Canyon near your place? A. No, sir.

Q. That is the truth? A. It is.

Q. Were you on relief during the time of the picket line? A. The last month of the strike.

Q. August was the first time you went on relief work, then? A. Yes, sir.

Q. How long did you continue on relief work? A. I put in one period.

Q. What period was that? A. That was that period in August—for the month of August.

Q. That is the only time that you have worked on relief? A. That's all.

Q. What other employment have you had since June 10, 1935? A. I worked in the Boriano Mine out of Kingman, Arizona.

Q. That was for the Boriano Mining Company? A. Yes, sir.

Q. When did you go to work there, Mr. Graham? A. About the second week in September.

Q. Of 1935? A. 1935.

Q. What was the job that you obtained at the Boriano Mining Company? A. A mucker.

Q. What was your rate of pay? A. $4.

Q. How many days a week were you working when you started there? A. Seven days.

Q. At the time that you left the employ of Phelps Dodge Corporation, I believe you have testified you were receiving $4.40 a day? A. Yes, sir.

Q. How many days a week were you working? A. Five days.

Q. How long did you stay with the Boriano Mining Company? A. Eight or nine month.

Q. Did you work continuously during that period? A. Yes, sir.

Q. What kind of mining was the Boriano Mining Company engaged in? A. Tungsten.

Q. How many men did they employ? A. It varied quite a bit.

Q. Approximately how many? A. I have seen 150 there, and at other times 50.

Q. Do you know whether or not the Boriano Mining Company is still operating? A. I know that their mill burnt down here not long ago, and they closed down. I don't know whether they have re-opened or not.

Q. But up until that time they had been operating? A. Yes, sir.

Q. So far as you know, that was a temporary shut-down? A. Yes, sir.

Q. You say you worked, then, for about eight months with the Boriano Mining Company? A. Yes, sir.

Q. That was from September, 1935? A. September until May.

Q. Until May of 1935? A. May of 1936.

Q. May of 1936? A. Yes, sir.

Q. How did you happen to leave that job? A. I was discharged.

Q. During the course of your employment at the Boriano Mining Company did your rate of pay ever exceed the rate that you started at, which I believe you testified was $4? A. It did not.

Q. You were employed, then, during that period at $4 a day, seven days a week? A. Yes, sir.

Q. Continuously during the period? A. Yes, sir.

Q. Did you receive your board there? A. No, sir.

Q. What did you do after you were discharged by the Boriano Mining Company? A. I came to Bisbee.

Q. In May of 1936? A. Yes, sir.

Q. Did you obtain employment here in Bisbee? A. I did not.

Q. How long was it before you did obtain employment? A. About a month.

Q. Then you got a job in June of 1936? A. Yes, sir.

Q. What was that job? A. Mining.

Q. Who for? A. Sunshine Mining Company in Kellogg, Idaho.

Q. Oh, you left the district then? A. I did.

Q. How long did you stay here when you came back from Kingman? A. About a month.

Q. And then you went direct to Kellogg, Idaho? A. No, I went to Butte, Montana.

Q. Did you work at Butte? A. I did not.

Q. Did you go from Butte to Kellogg? A. Yes, sir.

Q. What was the approximate date of your first employment with the Sunshine Mining Company? A. About June 25th.

Q. 1936? A. Yes, sir.

Q. What was your job with that company? A. Miner.

Q. At what rate of pay did you start? A. $5.75.

Q. $5.75 a day, and how many days a week did you work? A. 7 days.

Q. And for what period of time did you work for the Sunshine Mining Company? A. Until November.

Q. November of 1936? A. Yes, sir.

Q. Why did you leave that job? A. My boy was sick, and I got a telegram to come home.

Q. During that period of time you were receiving the rate of pay which you have stated, 7 days a week, continuously, during that period? A. Yes.

Q. Did your rate ever increase? A. No, sir.

Q. You returned then to Bisbee in November of 1936? A. Yes, sir.

Q. How long after your return did you get a new job? A. About two weeks.

Q. And whom did you go to work for then? A. Shattuck Denn.

Q. And what was your job with Shattuck Denn at the time you started with them? A. Miner.

Q. What was the rate of pay that you started on? A. I am not positive of that.

Q. Was it in excess of $5.00? A. I am not sure of that.

Q. What was the exact date, can you recall, that you started to work for the Shattuck Denn? A. No, I can't. I believe it was about the 23rd, somewhere along there.

Q. Of December, 1936? A. Of November.

Q. Of November? A. Yes.

Q. Have you been working continuously for the Shattuck Denn Mining Company since that time? A. I have.

Q. At what job are you employed with that company at the present time? A. Raise man.

Q. What is your rate of pay? A. $5.48.

Q. How many days a week do you work? A. 6 days.

Q. What did you say that rate of pay was? A. $5.48.

Q. At any time during the period which you have been employed by the Shattuck Denn Mining Company, has your rate of pay exceeded that amount? A. Yes, sir.

Q. What is the highest it has reached? A. I am not positive what the highest rate was. It was better than $6.00.

Q. Do you know, Mr. Graham, whether or not the Sunshine Mining Company is still operating? A. Yes, it is.

Q. At the time you were employed there, approximately how many men were employed by that company? A. I think around 400.

Q. Is it not a fact, Mr. Graham, that the Sunshine Mining Company is the largest silver producer in the United States? A. I couldn't say.

Q. Have you ever heard that statement made? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) At the Sunshine Mine did you have to work 7 days a week? A. We worked 7 days on one week and 6 days on the other. On the change day we laid off.

Q. They were required hours? A. Yes, sir.

Q. Is there any difference between conditions in a silver mine than in the Copper Queen? A. Yes, sir.

Q. What? A. In those mines you had to go into work on your own time and come out on your own time. The copper mines you work 8 hours, collar to collar, in this state.

Q. Any other difference, that is, in the actual conditions under which you work? A. Sir?

Q. Any difference in the conditions under which you actually work? A. Different type of mines.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

William Graham—For National Labor Relations Board —Recross.

Recross examination:

Q. (By Mr. Kitchel) Mr. Graham, would you rather work 6 or 7 days a week at the rate you were getting at the Sunshine Mining Company, than 5 days a week at the rate of $4.40? A. At the present time I would rather work 5 days at $4.40.

Q. You would prefer that? A. I would.

Q. And you would rather work 5 days a week at $4.40 than you would 6 days a week at $5.48, or whatever your present rate is? A. If I work them at the Phelps Dodge, yes.

Q. Have you discussed the answer to that question with any of the men out in the hall? A. I have not.

Q. Has it been mentioned at all? A. Not in my presence.

Q. No one stated to you that the Trial Examiner generally asked that question of the witnesses? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Where is the Sunshine Mine? A. It is 12 miles from Wallace and 8 miles from Kellogg.

Q. What state? A. Idaho.

Q. At the time you were up there did you maintain a home in Bisbee? A. Yes, sir; I kept my wife and baby here, except for a month, when they were up there.

Q. Has your pay ever been less than $4.40 at the Shattuck Denn Mine? A. No, sir.

Q. It has always exceeded that? A. Yes, sir.

Q. You read the local newspapers here, do you? A. I do.

Q. Did you see the account of yesterday's hearing in that paper? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

WILLIAM EDWARD SHARP, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: William Edward Sharp.

Direct examination:

Q. (By Mr. Persinger) Mr. Sharp, were you formerly employed by the Phelps Dodge Corporation? A. I was first employed by the Copper Queen in 1929.

Q. How long did you work? A. I don't know; it was somewhere around probably a year, and I was laid off there in the first of the depression.

Q. And when were you reemployed after that? A. I got a job on the 7th of June, was examined on the 9th of June.

Q. What year? A. In 1935; and then I went to work on the 10th of June and then came out on strike on the 11th of June.

Q. Were you on the picket line after that? A. Yes, I was.

Q. What was the last day you were on the picket line? A. I don't remember the exact date, but it was somewhere the 1st of August, I believe.

Q. After the strike was over, did you apply for reinstatement? A. I did.

Q. When? A. In about—it was in 1935, in October, somewheres around about the 15th.

Q. And to whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. Was anyone else present? A. There was not.

Q. What time of day was it? A. It was in pretty close to dinner time, lunch time.

Q. What did you say to Mr. Bateman? A. I asked him, "How's the chance to go to work?" And he said, "No, there isn't." And I asked him if it would do me any good to rustle, and he said "No," and I asked him why, and he said, "On account of the trouble you were in during the strike."

Q. Did you apply again after that? A. I did.

Q. When? A. In Morenci, Arizona, 1937; some time in September, I believe, as close as I remember.

Mr. Evans: We object to that. The application in Morenci, Arizona, has nothing to do with the Mines Division of the Copper Queen Branch at Bisbee.

Mr. Persinger: If the Examiner please, the complaint is issued against the corporation, and I expect the witness to bring out that Mr. Bateman happened to be employment manager at Morenci at this particular time. I think on those two scores it would be material.

Trial Examiner Kennedy: Read the question and answer, Mr. Reporter.

(The record referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: Objection overruled. It may stay in.

Q. (By Mr. Persinger) Did you answer? A. Mr. Bateman came out of the smaller office. It was the employment office, and he was going across the street to the larger build-

ing, and there was quite a few men standing around there. Who they were, I don't know.

I asked Mr. Bateman if there was any chance for me to go to work up there.

He said, "No."

I said, "Would it do me any good to rustle?"

He said, "No, it will not."

I asked him, "Why?"

He told me that on account of the trouble I was in in Bisbee I was no longer wanted. So I said, "Thank you."

He said, "I'm sorry," and I walked off.

Q. Have you applied since? A. I have not.

Mr. Persinger: I offer in evidence Board's Exhibit No. 42, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 42.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) You were not employed by Phelps Dodge Corporation at any time between 1930 and June 8, 1935, were you, Mr. Sharp? A. In 1930?

Q. Between 1930 and 1935. A. I was laid off there in the first part of the depression. I went to work in '29, and then I was laid off the first part of the depression. I think it was in '30, I believe.

Q. And after that the only time you were employed was about June 8th, with the instructions to report to work on June 10th? A. I got a job on June 7th.

Q. On June 7th? A. Yes, sir.

Q. And you were to report on June 10th? A. Yes, sir.

Q. June 10, 1935, is the only day that you worked? A. Yes, sir.

Q. Did you work that day? A. Yes, sir.

Q. Full shift? A. Yes, sir.

Q. When were you in Morenci? A. Some time in September. I couldn't say exactly.

Q. What year? A. 1937.

Q. 1937? A. Yes, sir.

Q. As a matter of fact, you did not see Mr. Bateman up in Morenci at that time, did you? A. Yes, sir.

Q. You did not see him in his office, did you? A. No, sir; I didn't.

Q. How long had you been there when you saw Mr. Bateman? A. I got in there that morning.

Q. Whereabouts did you see him? A. Out in front of the employment office, and he was going across the street to the larger building on the other side.

Q. As a matter of fact, you did not have any conversation at all with Mr. Bateman in Morenci, did you? A. Yes, sir; I did.

Q. Are you employed at the present time? A. Well, yes. I am employed with the Alpine Mining Company, but off on compensation now.

Q. You are receiving workmen's compensation? A. Yes, sir.

Q. Your hand was disabled in an accident when you were employed with the Alpine Mining Company? A. Yes, sir.

Q. Where is the Alpine Mining Company located? A. It's about 26 miles from Elfrieda, Arizona, in the Chiricahua Mountains.

Q. How long have you been working for that company? A. I went to work there right after I came down from Morenci—well, about 15 days after that. It was in October when I went to work, October 18th or 19th, I think.

Q. 1937? A. Yes, sir.

Q. What work were you doing for the Alpine Company? A. At the time I was hurt I was mining.

Q. What pay were you receiving? A. $5 a day.

Q. Have you received $5 a day ever since you have been working for them? A. No, sir, I haven't.

Q. What did you receive when you first went to work for them? A. I was mucking; $5 a day.

Q. How long were you mucking for them? A. Well, just a few days before I hurt my finger.

Q. You hired on as a mucker, did you? A. Yes, sir.

Q. With Phelps Dodge Corporation? A. No, sir; as a blacksmith's helper.

Q. What rate of pay? A. I don't know; I don't remember.

Q. You never worked as a blacksmith's helper before, did you? A. I hired out before in a blacksmith shop as a hammer driver.

Q. That was back in 1930? A. That was back in 1929 when I hired out there.

Q. And you worked at that time as a hammer driver? A. Yes, sir.

Q. You don't know what rate of pay a blacksmith's helper was receiving in 1935, then? A. No, sir; I don't.

Q. Did you ever go to get your pay for the one day that you worked? A. No, sir; I didn't.

Q. Where were you employed, if at all, prior to the time you went to work for the Alpine Company? A. Where was I working when I went to work there?

Q. No, prior to the time you went to work for the Alpine Company. A. Before I went to work for the Alpine Company I was working at Lordsburg with the Bonnie Mining Company.

Q. Banner? A. Bonnie.

Q. Bonnie? A. Bonnie.

William Edward Sharp—For National Labor Relations Board—Cross.

Q. B-o-n-n-i-e? A. Yes, sir.

Q. When did you go to work for that company? A. It was in 1936, the last part of December or January. I don't know exactly the date.

Q. Of 1936? A. Yes, sir.

Q. What did you hire on as? A. Miner.

Q. What rate of pay did you receive? A. $5 a day.

Q. How long did you work at the Bonnie Mining Company? A. About eight months.

Q. Did you receive more than $5 a day at any time during that period? A. No, sir.

Q. What? A. No, sir.

Q. How many days a week did you work? A. Seven days a week, except when I would lay off once in a while.

Q. Were you discharged from the Bonnie Mining Company? A. No, sir.

Q. You left there voluntarily? A. Yes, sir.

Q. About what month of the year 1936 did you leave? A. It was some time in August—in August, 1937, when I left.

Q. August of 1937? A. Yes, sir.

Q. And you worked there continuously for about eight months? A. Yes, sir.

Q. Where were you employed, if at all, prior to the time you went to work for the Bonnie Mining Company? A. Well, I was working for Cason on a—I don't know—a W. P. A. job, on a road job in the underpass in Douglas.

Q. What was the name of your employer? A. J. A. Cason.

Q. He was the contractor on that job, was he? A. Yes, sir.

Q. When did you go to work for him? A. Well, I worked for him—I couldn't say exactly, but it was just a few months before I went to work for the Bonnie Mining Company.

Q. You worked for him for several months, however? A. For probably three or four months.

William Edward Sharp—For National Labor Relations Board—Cross.

Q. How many days a week did you work for Cason? A. Well, 40 hours a week.

Q. What rate of pay did you receive? A. Well, I was on a job—I was a hod-pan operator; 62½ cents an hour and 75 cents an hour.

Q. That is, you received 62½ cents an hour when you first went to work? A. Yes, sir.

Q. And then later 75 cents an hour? A. Yes, sir.

Q. And that was for 40 hours a week? A. Yes, sir.

Q. For whom did you work prior to the time you started to work for the Cason outfit? A. I worked for Pleasant & Hasler.

Q. Where did you work for Pleasant & Hasler? A. I worked on this—from Fort Huachuca to Bisbee—on the road into Bisbee—not into Bisbee, but on the other side.

Q. When did you work for them? A. I went to work for them in 1935. I think it was somewheres around the 1st of November, to the best I remember, or the last of October.

Q. How long did you work for them? A. I worked for them from then until the time I went to work for Cason.

Q. You worked continuously, then, from either the latter part of October or the early part of November, 1935, until about August of 1936? A. Well, except a few days before I went to work on the Cason job; just a few days.

Q. What rate of pay did you receive from Pleasant & Hasler? A. Well, when I first went to work there, I went to work there at 50 cents an hour, common labor.

Q. And how many hours a week? A. Forty hours a week.

Q. Then what did you receive? A. Then I went from that to 62½ cents an hour.

Q. How long did you work at 50 cents an hour? A. About four days, I think—four or five days.

Q. And from then on did you have work at 62½ cents an hour? A. No, sir, the last part of the time I was there I got 75 cents an hour.

Q. How long did you work at 62½ cents an hour? A. Well, up until about two weeks before I left there.

Q. And the last two weeks you were there you received 75 cents an hour? A. About that.

Q. 62½ cents an hour for a 40-hour week was more money than you would have made in the blacksmith shop as a blacksmith's helper for P. D., isn't it? A. Well, if you worked steady, it is.

Q. And you worked steadily during that period, didn't you? A. Well, when it didn't rain or snow and you couldn't work, but there were lots of weeks that I didn't get 40 hours in.

Q. Have you at any time since August, 1935, up to the present time had any case involving your employment or discharge from the National Labor Relations Board other than this case? A. Well, not exactly, no. I never have had the Labor Relations Board before, before this time, no.

Q. This is the only time that you have had any case before the Labor Board? A. Yes, sir.

Q. Didn't you seek reinstatement at the Bonnie Mine? A. I did.

Q. And you filed an application for reinstatement before the Labor Board? A. No, sir.

Q. How did you happen to leave the Bonnie Mine? A. Well, my father got sick just before I left there, and I got a wire to come home, so I came home, and it was about two or three days before payday, as I recall, and I asked them if they would send me my check, and they said they would, and then I wired back and told them not to send it, that I didn't need it. And then when I went back my time was waiting for me, my full time.

Q. And then you didn't file a petition with the Labor Board and seek reinstatement? A. Not with the Labor Board, I did not.

Q. Did you file a request for reinstatement with the union? A. Well, yes.

William Edward Sharp—For National Labor Relations Board—Redirect.

Q. And did they take your case up before the Labor Board? A. They did not.

Q. Was any disposition made of that request for reinstatement? A. Not that I know of. I left that place shortly after, in a few days.

Q. You are not seeking any reinstatement or back pay of any kind from the Bonnie, then? A. No, sir.

Q. Do you know whether that case is still pending? A. No, sir, it is not.

Q. How do you know that? A. Well, I don't imagine it would be. There was never nothing said about it, and I dropped it, and that was all there was to it.

Q. You have heard nothing further in regard to it? A. No, sir.

Mr. Evans: No further questions.

Redirect examination:

Q. (By Mr. Persinger) Is that the Bonnie Mining Company, or Banner Mines? A. Well, it is the Bonnie Mine now, is what they call it. It used to be the Banner.

Q. Where is your home? A. In Bisbee is where I was raised.

Q. I mean, where is your home at the present time? A. Well, it is at the Alpine Mining Company out in the Swisshelm Mountains.

Q. Are you married? A. Yes, sir.

Q. Is your wife up there with you? A. Yes, sir.

Q. How far is that from Bisbee? A. It is about fifty some-odd miles.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

Richard Johnson—For National Labor Relations Board—Direct.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You don't know what you were supposed to be paid at the Phelps Dodge Company? A. No, I don't.

Q. What was your classification to be there? A. Blacksmith's helper.

Q. Blacksmith's helper? A. Yes, sir.

Q. When did you go to work for the Alpine Company? A. About October 18th, something like that.

Q. Is that last year? A. Yes.

Q. 1937? A. Yes, sir.

Q. Do you consider that a permanent job? A. No, sir.

Q. Why not? A. Well, since the drop in silver they have laid off quite a few men, and I don't know exactly whether I will be working when I go back or not. If they are, I do, and if they are not, I don't.

Trial Examiner Kennedy: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Richard Johnson, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Richard Johnson.

Direct examination:

Q. (By Mr. Persinger) Mr. Johnson, have you ever been employed by the Phelps Dodge Corporation? A. No, I haven't.

Richard Johnson—For National Labor Relations Board—Direct.

Q. Have you ever applied for work at Phelps Dodge Corporation? A. Yes, sir.

Q. When? A. In the months of January, February and March. Just after the strike.

Q. That would be 1936? A. '36.

Q. Any members of your family formerly employed by the Phelps Dodge Corporation? A. Yes, father and brother.

Q. To whom did you apply for work? A. Mr. Bateman.

Q. Did you actually talk to him at any time? A. Yes, in his office.

Q. When was the first time you spoke with him? A. In January.

Q. Anyone else present? A. No.

Q. What time of day was that? A. About 9:30.

Q. In the morning? A. Yes, sir.

Q. What did you ask Mr. Bateman? A. I asked him if there was any chance for a job.

Q. What did he say? A. He said, Well, my father and brother weren't in very good standing with the company, and that there wouldn't be no chance.

Q. Did you cease trying to get on? A. No, I kept trying.

Q. How long did you rustle? A. Three months.

Q. Did you ever speak to Mr. Bateman again? A. Yes, sir.

Q. When? A. Well, I spoke to him several times in those three months.

Q. When was the last time you spoke to him? A. In March.

Q. Where did you see him that time? A. In his office.

Q. Anyone else present at that time? A. No.

Q. What was said then? A. Well, he told me, he said, "Well, I thought we had this out once before."

And I said, "Yes."

And I said, "Well, I thought maybe if I kept rustling there would be a chance. I never have worked here."

And he said, "Well, no, there wouldn't be no chance at all."

Q. Anything further said? A. No.

Q. Have you applied for work since? A. No.

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Johnson, what months did you say you rustled in? A. January, February and March.

Q. Of what year? A. '36.

Q. When did you graduate from Bisbee High School? A. '34.

Q. In 1934? A. Yes, sir.

Q. You have stated, I believe, that you have not been employed by the Phelps Dodge Corporation? A. I never have.

Q. Are you employed at the present time? A. Yes.

Q. By whom? A. Shattuck Denn.

Q. When did you go to work for them? A. April 9th.

Q. Have you been employed continuously by them since that time? A. Yes, sir.

Mr. Kitchel: That is all.

Redirect examination:

Q. (By Mr. Persinger) April 9th, of what year? A. '36.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Are you a member of the union? A. Yes, now I am.

Q. When did you join? A. When I first started to work for Shattuck and Denn.

Q. When was that, again? A. When I first started working at Shattuck and Denn.

Q. I know, but what year? A. '36.

Q. Did you have any part in this strike that we are considering here? A. No, sir.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Shall we take a few minutes recess?

Trial Examiner Kennedy: Yes, we will have a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Bethel.

LESTER F. BETHEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Lester F. Bethel.

Direct examination:

Q. (By Mr. Persinger) Mr. Bethel, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. After the merger went through. I was working for the C. & A. before.

Q. How long had you worked with the C. & A.? A. I started in in '25.

Q. Did you work continuously until the merger? A. I did.

Q. After the merger how long had you worked for Phelps Dodge? A. Until the 10th of June, 1932.

Q. '32? A. No, '35.

Q. You mean the time of the strike? A. The time of the strike.

Q. You were not laid off during the general lay-off? A. No, sir.

Q. What job did you have at the time of the strike? A. Motorman.

Q. What rate of pay were you receiving? A. $5.24.

Q. And you went out on strike? A. I did.

Q. Were you on the picket line? A. I was.

Q. What was the last day you were on the picket line? A. About the 20th of August.

Q. Since the strike have you applied at any time for reinstatement with the company? A. I have.

Q. When was the first time? A. The second day the strike was called off.

Q. To whom did you apply? A. Murray Bateman.

Q. Did you speak to him that day? A. Not that day. I stood out in front.

Q. Did you ever speak to him? A. Sir?

Q. Did you ever speak to Mr. Bateman? A. Not that day.

Q. Any other day? A. I went back about four days, and about the fifth day I went in his office.

Q. What time of day was that? A. About 9:00 o'clock.

Q. Was anyone else present? A. That insurance man, Mr. Hollingshead.

Q. He was in Mr. Bateman's office? A. He was.

Q. Did you say anything to Mr. Bateman? A. Yes, sir.

Q. What did you say to Mr. Bateman? A. I asked him for a job.

Lester F. Bethel—For National Labor Relations Board—Direct.

Q. What did he say? A. He said the company had never expressed themselves as to what they were going to do with the striking men.

Q. Did he say anything else? A. He said to come back later.

Q. Did you go back later? A. I did.

Q. When? A. In December of the same year.

Q. Did you see Mr. Bateman at that time? A. I did.

Q. Where? A. In his office.

Q. What time of day? A. About 9:00 o'clock.

Q. Was anyone else present? A. Mr. Hollingshead was in his office. He wasn't in Mr. Bateman's office.

Q. He was not in Mr. Bateman's office? A. I don't believe so.

Q. What was said on that occasion? A. He said I had an outstanding record. He first asked me if I wanted to go to work. He said, "You want to go to work, do you?"

I said, "Yes."

He said, "You have an outstanding record, signed by Harry Lavender, but I cannot make no exceptions in your case."

Q. Was anything further said? A. I asked him for a recommendation then.

Q. What did he say? A. He said he would be glad to give me one.

Q. Did he give you one? A. He said to come back later, that he was pretty busy that day. He had hired some men.

Q. Did you go back later? A. I never did go back later.

Q. Have you applied for work at any time since then? A. I have.

Q. When? A. Last year.

Q. What time last year? A. Well, it was somewhere around the first of April—May—the day after Vic Smith got his settlement, whenever that was.

Q. Whom did you see? A. Murray Bateman.

Q. Where? A. I asked him for a job in the Lowell waiting room.

Q. That is the waiting room for what? A. Where they wait for busses down at Lowell.

Q. Anyone else there? A. The bartender.

Q. Anyone else? A. Yes. There were several lined up along the bar.

Q. What did you say to Mr. Bateman? A. I asked him if he was putting any of the Union men on. He said, "No, not yet."

Q. Anything further said? A. And we kept talking, and he said he had seen where Vic Smith got his settlement yesterday.

Q. Anything else? A. He said he would be willing to be shot for that much money himself; and then he said, no, he was just joking.

Mr. Evans: I move to strike the answer as immaterial.

Trial Examiner Kennedy: It may go out.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 43, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 43.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) Are you employed at the present time, Mr. Bethel? A. I am.

Q. By whom? A. By a Southern Pacific contractor.

Q. How long have you been so employed? A. The 5th of December, a year ago.

Lester F. Bethel—For National Labor Relations Board—Cross.

Q. Since December 5, 1937? A. '37; yes, sir.

Q. Or 1936? Last December, or a year ago last December? A. A year ago last December, the 5th, '36.

Q. 1936, that would be? A. Yes.

Q. Have you been continuously employed on that job? A. I have.

Q. What rate of pay have you been receiving? A. I received $65.00 a month up until May, and $130 a month since then.

Q. Since May, 1936? A. '37.

Q. Or '37, yes. Prior to May, 1937, you received—— A. $65.00 a month.

Q. (Continuing)—$65.00 a month. Were you doing any other work during that period you were receiving $65.00 a month? A. I was not.

Q. Were you receiving your board or room in addition to that? A. I had a house furnished; that was all..

Q. You had a house furnished, did you? A. Yes, sir.

Q. That was at Hereford? A. Fort Huachuca.

Q. Prior to December, 1936, were you employed? A. On WPA.

Q. By that, do you mean on relief work, or on these projects? A. Relief work for the county, building the road from Naco.

Q. I see. Other than the relief work, did you have any employment between June 10, 1935, and December of '36? A. Yes, sir. I worked 6 weeks for the Tungsten Production Company.

Q. That is in the Huachuca Mountains? A. It is.

Q. And what were you employed as? A. Miner.

Q. When were you employed there? A. About June 16th.

Q. What year? A. '35, at the time of the strike.

Q. You were employed with the Tungsten Production Company from June 16, 1935, for a period of about 6 weeks? A. I was.

Q. And what was your job? A. Mining.

Q. What rate of pay did you receive there? A. $4.00 a day.

Q. And how many days a week? A. 5 days a week.

Q. Did you have any other jobs during that period? A. While I was working there?

Q. No, after you left there. A. I worked for Pleasant-Hasler about a week.

Q. And when did you go to work for Pleasant-Hasler? A. Well, for about the second day after I was let out from the Tungsten Production Company.

Q. Were you laid off, or did you leave the Tungsten Production Company voluntarily? A. I was laid off. It was closed down.

Q. And you only worked about a week for Pleasant-Hasler? A. Yes, sir; maybe a little longer, I wouldn't say exactly.

Q. What rate of pay did you receive from them? A. 50 cents an hour.

Q. And how did it happen you left the employ of the Pleasant-Hasler? A. Well, they called the strike off and I quit and came in and tried to get work back in the mine. I was away from home.

Q. Did you receive any other work after that? A. WPA.

Q. After you left Pleasant-Hasler? A. WPA.

Q. Then you worked on PWA work until December, 1936, when you went to work for the Southern Pacific contractor? A. I did.

Q. How many days a week did you work for the PWA, or a month? A. $50.00 a month is what I got, 11 days a month.

Q. Did you receive $50.00 a month straight through that period? A. I did.

Q. At the present time you are working for Mr. Fletcher, I believe? A. No, sir; Mr. Fry.

Lester F. Bethel—For National Labor Relations Board—Cross.

Q. He is the contractor with the Southern Pacific Company? A. He is.

Q. And you are receiving $130.00 a month? A. Yes, sir.

Q. Are you also receiving your house? A. I am.

Q. Your house is furnished you in addition to that? A. It is.

Q. Any other facilities furnished you? A. No, sir.

Q. Lights? A. No; they charge for them; a cent a kilowatt.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anying further?

Mr. Persinger: Nothing further.

Examination by Trial Examiner Kennedy:

Q. (By Trial Examiner Kennedy) Do you consider your present employment permanent? A. No, sir. It ends the 13th day of this month.

Q. It ends the 13th of this month? A. They are taking out the trains, two trains.

Q. Have they offered you other employment? A. They have not. They give me two weeks' notice the day before yesterday that the 13th was the last.

Q. Do you want to go back to Phelps Dodge? A. Sure I would like to.

Q. You are a member of the Union, are you? A. I am.

Q. When did you join? A. I was a charter member the first night they got it up.

Q. That was what yeay, '33? A. Either '32 or '33, I believe; I don't remember exactly.

Q. Have you been a member continuously since then? A. I have.

Trial Examiner Kennedy: Anything further?

Mr. Evans: One more question.

Lester F. Bethel—For National Labor Relations Board—Cross.
Mike Mihelich—For National Labor Relations Board—Direct.

Cross examination (continued):

Q. (By Mr. Evans) You had no intention of leaving the employ of the Southern Pacific contractor until a few days ago when you received notice that they were cutting out those trains, did you? A. I did if I could get work here in town, for I own my own home here and I like to live here.

Q. You are being furnished a house where you are, are you not? A. Well, if you want to call it that.

Q. You are making better money out there than you could make in the mines? A. About the same, I guess.

Q. The work isn't as hard, is it? A. Just as hard as the work I had in the mines.

Q. All you do is drive a bus between Fort Huachuca and Hereford? A. Yes, but I get up at midnight every night.

Q. I know, but I am just asking you. You drive a bus between Fort Huachuca and Hereford? A. That is all; handle all the express and baggage.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

MIKE MIHELICH, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Mike Mihelich.

Direct examination:

Q. (By Mr. Persinger) Mr. Mihelich, were you formerly employed by the Phelps Dodge Corporation? A. I worked for the C & A.

Mike Mihelich—For National Labor Relations Board—Direct.

Q. You worked first with the C & A? A. The C & A, yes.

Q. When did you go to work for the C & A? A. 1916.

Q. And you worked how long? A. Worked along until the merger in the Copper Queen.

Q. You worked from 1916 until the merger? A. At the time of the strike.

Q. You kept on through the merger, through the general layoff, up to the time of the strike? A. Yes.

Q. At the time of the strike, were you a member of the Union? A. Yes, I was.

Q. You went out on strike with the Union? A. Yes, I did.

Q. Were you on the picket line? A. I was.

Q. What was your job just before the strike? A. Timberman.

Q. At what rate of pay? A. $5.24.

Q. Since the strike have you applied for reinstatement? A. I did.

Q. When? A. Right away; a few days after the strike was called off.

Q. To whom did you apply? A. To Mr. Bateman, in his office, employment office.

Q. Was anyone else present? A. Once there was one employee with him.

Q. And what did you say to Mr. Bateman? A. I asked him, "Mr. Bateman, how's the chance for a job?"

Q. What did he say? A. He said, "Nothing doing for you."

Q. Anything further said at that time? A. He didn't say nothing more at that time at all.

Q. Did you apply at any time after that? A. I did.

Q. When? A. A couple of times after that.

Q. But when? A. After the strike.

Q. When, what month? A. Oh, that was sometime in September month.

Mike Mihelich—For National Labor Relations Board—Cross.

Q. Did you apply to Mr. Bateman? A. Yes, I asked him for a job, and he told me, "No job for you."

Q. Is that all he said? A. That is all he said.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 44, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 44.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Mihelich, are you at present an employee of the Phelps Dodge Corporation? A. Please question again?

Trial Examiner Kennedy: Read the question, please, Mr. Reporter.

(Thereupon the question was read by the Reporter as above recorded.)

A. Now? No, not now.

Q. (By Mr. Kitchel) Have you ever been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. Did you say that you were in the picket line every day? A. Not every day; off and on, every second or third day, sometimes a week after, just in between.

Q. When was the last time you were in the picket line? A. I was in the picket line a week before the strike was called off.

Q. A week before? A. A couple of days before the strike was called off.

Mike Mihelich—For National Labor Relations Board—Cross.

Q. When was the strike called off? A. I believe it was the 24th of August.

Q. And the last time you were on the line, then, was two or three days before that? A. Two or three days before the strike was called off.

Q. Were you in the picket line on the 21st of August? A. I don't know the date, anyway.

Q. During the course of the time when the picket line was there, were you on relief? A. No, sir.

Q. Were you employed at all? A. No, sir.

Q. Are you employed at the present time? A. No, sir.

Q. Have you had any employment since June 10, 1935? A. Since 1935 I was two days on the soil erosion; then I was working for a leasor for a couple of months.

Q. What leasor was that? A. Jim McKenna.

Q. When did you start working for him, Mr. Mihelich? A. I started to work in 1936, November month.

Q. November 1936? A. Yes.

Q. What kind of work were you doing for Mr. McKenna? A. Track and pipes in the mine.

Q. What was your rate of pay? A. For Mr. McKenna?

Q. Yes. A. It was one time $5.75; then $5.50; then they raised them to $5.75.

Q. How long did you say you worked for Mr. McKenna? A. About 10 months.

Q. About 10 months? A. 10 months.

Q. Do you remember the rate of pay, whether it continued to be the same during that period? A. Yes. Later it was—at first it was only $5.50, and then he raised it to $5.75. That was the last pay.

Q. And when did you leave McKenna's employ? A. November month; the 18th of November, last year.

Q. 1937? A. 1937.

Q. You were laid off at that time? A. He shut down.

Q. Have you had any work since then? A. No, sir.

Mike Mihelich—For National Labor Relations Board—Cross.

Q. Are you on relief at the present time? A. No, sir.

Q. Have you been on relief at any time during this period of time? A. No, sir.

Q. How old are you, Mr. Mihelich? A. I will be 60, now.

Q. What type of work were you doing in May of 1935, prior to the walkout? A. I was timberman.

Q. You have testified that you worked for Mr. McKenna for about 10 months; is that correct? A. Ten months; something like that.

Q. During that course of time, how many days a week did you work? A. We worked—before, we worked 5 days; then 6. For a time we worked only 5.

Q. Did you work continuously ~~during~~ that whole time? A. During the 10 months, yes.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want your old position back at Phelps Dodge? A. I would like to have it.

Q. Are you a member of the Union? A. Not now.

Q. Were you ever? A. I was.

Q. When? A. Before the strike was called.

Q. How long had you been a member at the time of the strike? A. Previous to the strike? About two years.

Q. And then you dropped out after the strike? A. After the strike I didn't pay my dues. I didn't have any money.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Pete Caretto.

Pete D. Caretto—For National Labor Relations Board—Direct.

PETE D. CARETTO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Pete D. Caretto.

Direct examination:

Q. (By Mr. Persinger) Mr. Caretto, were you formerly employed by Phelps Dodge Corporation? A. I was; yes, sir.

Q. When were you first employed by them? A. 1922.

Q. Was that Phelps Dodge or C. & A.? A. Calumet & Arizona Mining Company.

Q. How long did you work for the C. & A.? A. Up until they merged in 1931.

Q. Did you continue to work immediately after the merger? A. Yes, sir.

Q. And you worked there how long? A. Until '31.

Q. And you were off how long? A. I was off until the spring of '32.

Q. And you went back to work then? A. Yes, sir.

Q. How long did you work there that time? A. Up until the strike.

Q. At the time of the strike what was your position? A. I was top man at the Cole.

Q. What rate of pay did that carry? A. $5.00.

Q. What is that? A. $5.00.

Q. Before you were transferred to Cole, what was your job? A. Miner.

Q. How long had you been mining? A. I would say about two months.

Q. Before you went to mining, what was your job? A. I was on the cages.

Q. Were you a member of the Union at the time of the strike? A. I was; yes.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over did you apply for reinstatement? A. Not after the strike; no, sir.

Q. Why not? A. I didn't figure it was no use going up there after the strike.

Q. Did you have any reason for thinking that? A. Well, I was up there on the picket line one day and I asked him, "What is the chance for my job?" And he said, "No, no."

Q. What day was that? A. The 21st of August.

Q. Did anybody else there ask for their jobs that day? A. There was.

Q. Tell me what happened that day. A. There were quite a few of them up there; some 30 or 40 up there, and I asked him—he come out and hollered for miners. One fellow spoke up and said, "I'm a miner."

Another fellow spoke up and said, "I'm a miner."

I spoke up and said, "What's the chance for getting my job back?"

He says, "Nothing doing."

He said, "You strikers won't go to work for the company any more."

Q. And you have not applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 45, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 45.)

Mr. Persinger: Take the witness.

Pete D. Caretto—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Evans) On August 21st the strike was still in progress? A. It was.

Q. And the picket line was still out there? A. It was.

Q. And you were picketing? A. Yes.

Q. Endeavoring to keep other people from going to work? A. Sir?

Q. Endeavoring to keep other people from going to work? A. No, sir.

Q. What were you doing there? A. Just up there talking to him.

Q. What was your purpose in being there? A. My purpose was to see if I could get my job back and go back to work.

Q. Is that why you were on the picket line? A. It was on that particular morning.

Q. That is why you were on the picket line from June 10, was it? A. No, sir.

Q. When did you suddenly change your purpose in being on the picket line? A. Two days before the strike was called off.

Q. When was the strike called off? A. On the 24th of August.

Q. What date would two days before the strike was called off be? A. The 22nd of August.

Q. We are talking about the 21st, not the 22nd. A. I didn't hear your question.

Q. I say, the time that you said you were on the picket line, and Mr. Bateman said there would be no more jobs for "you strikers," was on the 21st, was it not? A. On the 21st; yes, sir.

Q. I believe you testified that it was not until the 22nd that you decided that you wanted to go back to work? A. No, sir; the 21st.

Q. Didn't you state that it was on the 22nd, or two days before the strike was called off, that you decided that you wanted to go back to work? A. No, sir.

Q. I must have mistaken you. You are not in the employ of the company at the present time? A. No, sir.

Q. You have not been an employee of Phelps Dodge Corporation since June 10, have you? A. No, sir.

Q. 1935. What are you doing at present? A. Working for the W. P. A.

Q. Are you working on relief work? A. Yes, sir.

Q. Have you been employed other than on W. P. A. or other such relief work at any time since June 10, 1935? A. Since the strike has been called off?

Q. Well, since you walked out on June 10, 1935? A. I have worked after the strike was called off.

Q. Where did you work? A. I went to work for a Shattuck leasor.

Q. For whom? A. For a Shattuck leasor.

Q. What was his name? A. McPhail and Riley.

Q. When did you work for them? A. I went to work for them in 1936.

Q. What month? A. December.

Q. How long did you work for them? A. Three months and a half.

Q. What was your job? A. Miner.

Q. And how many days a week were you working? A. 5 days a week; $5.00 a day—6 days a week.

Q. And you worked for them about three months and a half? A. Yes, sir.

Q. Why did you leave their employ? A. I didn't like them.

Q. You didn't like them? A. No, sir.

Q. You left voluntarily? A. Yes, sir.

Q. What did you do after that? A. I went to work for Jim McKenna's.

Q. Who? A. Jim McKenna's.

Q. Jim McKenna? A. Leasor.

Q. Did you start to work for him immediately after you left the Shattuck lease? A. No, a couple of months. I went to work for him in '37.

Q. Did you do anything at all from the time you left the Shattuck lease up to the time you went to work for McKenna? A. No, sir.

Q. Did you endeavor to get any employment? A. No, sir.

Q. Did you apply at the Shattuck Denn? A. Yes, sir.

Q. During that period? A. Yes, sir.

Q. The Shattuck Denn Mining Company? A. Yes, sir.

Q. Why wouldn't they employ you? A. Well, they wasn't putting men on at that time.

Q. Approximately what month was it you went to work for McKenna? A. Around January or February.

Q. Of '37? A. '37.

Q. How long did you work for McKenna? A. Two months and a half.

Q. What pay did you receive there? A. Mucker's pay; $4.40.

Q. Was McKenna paying mucker's pay of $4.40 in January of 1937 and in March of '37? A. He was.

Q. Why did you leave there? A. The ground was too bad; didn't like the works.

Q. You didn't like to work there? A. No, sir.

Q. You left there voluntarily, did you? A. Yes, sir.

Q. Then what did you do? A. Just loafed around; went from one place to another.

Q. And you haven't worked since that time? A. No, sir.

Q. As a matter of fact, Mr. Caretto, isn't it a fact that the reason you left both of those employments was because you were drunk and couldn't go to work? A. No, sir; it is not.

Q. It wasn't? A. No, sir.

Q. Since 1937, when you left McKenna's, you have been doing W. P. A. work? A. No, sir. I went to work for the W. P. A. on the 27th of December, '37.

Q. Of '37? A. Yes, sir.

Q. How many days a month are you working on W. P. A.? A. I work—well, last period I worked 11 days; but this period, I will work either 8 day or 9 days. We go to work on the 26th of every month.

Q. That is the commencement of the period? A. That is what we call our period.

Q. During the period from June, 1935, until the present time, have you worked for anyone else other than the persons that you have enumerated? A. Yes. I worked for a dairy down here. That was after the strike.

Q. What dairy was that? A. Roadside Dairy.

Q. When did you go to work for the Roadside Dairy? A. I couldn't tell you what date that was.

Q. How long did you work there? A. Not very long; I didn't like the hours at that place.

Q. You didn't like the hours? A. No; 2:30 until 8:00; that was too much.

Q. How much pay did you receive there? A. That was $84.00 a month.

Q. $84.00 a month? A. Yes, sir.

Q. Did you have your lodgings furnished? A. Lodgings furnished, but we paid our own board.

Q. You paid your own board? A. Yes.

Q. So you quit all of these places because you didn't like the work there? A. Yes.

Q. As a matter of fact, you wouldn't like to go back to work for the P. D., would you? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy.) Did I understand you to say that you would not like to go back to the Phelps Dodge Corporation? A. I didn't hear that question.

Trial Examiner Kennedy: Read the last question asked by counsel.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Yes, I would like to go back to the Phelps Dodge.

Q. (By Trial Examiner Kennedy.) Have you ever studied law? A. No, sir.

Q. Have you ever studied the National Labor Relations Act? A. No, sir.

Q. You do not know, then, as a matter of law, whether you have been an employee of the Phelps Dodge Company since June, 1935, or not, do you? A. No, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Yes.

Redirect examination:

Q. (By Mr. Persinger) What was it about this Shattuck lease that you didn't like? A. Why, the track up there, it took four of us to pull a car up hill.

Q. Was there a track similar to that in the Copper Queen mine? A. No, sir.

Q. Why was it you didn't like the McKenna mine? A. Caving in all the time; no timber overhead; no lagging overhead.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Recross examination:

Q. (By Mr. Evans) Mr. McKenna's leasing operations were conducted in a part of the Phelps Dodge mine, were they not? A. Yes, sir.

Mr. Evans: That is all.

Mr. Persinger: That is all.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Henry Waters.

HENRY WATERS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Henry Waters.

Direct examination:

Q. (By Mr. Persinger) Mr. Waters, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. In '27.

Q. Was that Phelps Dodge, or C. & A.? A. It was Phelps Dodge.

Q. And you worked how long? A. Well, I worked until —I was laid off in '29.

Q. You returned to work when? A. In '33.

Q. What month, do you remember? A. No, I don't.

Q. Were you employed by Phelps Dodge Corporation in the early part of June, 1935, just before the strike? A. Yes, sir.

Q. And at that time were you a member of the Union? A. Yes, sir.

Q. What was your job then? A. Well, I was a miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over, did you apply for reinstatement with the company? A. I did.

Q. When? A. It was in December, '36.

Q. Why did you wait until December, '36? A. Well, the reason that the men had gone—they had been going up there and he hadn't put none of them back, and I figured it wasn't no use.

Q. In December, '36, where did you apply for work? A. Mr. Bateman's office.

Q. Was Mr. Bateman present? A. Yes, sir.

Q. Was anyone else there? A. Not that I remember.

Q. What time of day was it? A. It was about 8:30, or 9:30.

Q. And what did you say to Mr. Bateman? A. Well, I just asked him if there was any chance for a job, and he told me "No", he couldn't do a thing for me. And he said, "You just as well go to a union camp."

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 46 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 46.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Were you in the picket line, Mr. Waters? A. Yes, sir.

Q. How often? A. Well, I wasn't there regularly because I laid off, and I lived out in the valley, see, and I couldn't make it all the time.

Q. Whereabouts in the valley did you live? A. About 12 miles out in the Sulphur Springs Valley.

Q. Do you live there at the present time? A. No. I moved out there right after the strike, a few days after the strike, see? I couldn't afford to pay house rent, so I moved out.

Q. Do you have a place out there, or did you have a place out there before this, or did you buy one? A. No, I didn't buy one. I just moved out on a place out there.

Q. Are you living there at the present time? A. I am living—not in the same place, no. I have moved several times, but I am still in the same district.

Q. What was the last day you were in the picket line? A. Well, it was along about—— I wouldn't say for sure. Along about the 20th.

Q. The 20th of—— A. (Interrupting) Of August.

Q. (Continuing)—August, 1935? A. 1935.

Q. What date did you move out in the valley? A. It must have been about the 14th or 15th of June, right after the strike, see, just a few days.

Q. How many times a week did you drive in after that? A. Well, I will say twice.

Q. So that after that date in June you were not on the picket line but twice? A. Well, I wouldn't say for sure. Sometimes I might have been on three times a week.

Q. Oh, you drove in two or three times a week during that period? A. Yes.

Q. Just to see how it was going along? A. Yes, to be on the picket line.

Q. What were you doing out there in the valley? A. Working on relief.

Q. And were you on relief all during that period? A. Yes, sir, I have been on relief ever since the strike.

Q. Have you ever had any employment other than relief since June 10, 1935? A. No, sir.

Q. Have you ever applied for employment at the Shattuck Denn Mining Company? A. I sure have, yes, sir.

Q. How many times? A. Once.

Q. When was that? A. I couldn't say for sure.

Q. What year? A. I couldn't say—'37.

Q. Were they hiring at that time? A. Yes, sir.

Q. Were you rejected? A. I was hired and turned down on an x-ray.

Q. Bad lungs? A. Yes, sir.

Q. Have you filicosis at the present time? A. That is what they told me, that is what they say I have.

Q. You say that you didn't apply to Mr. Bateman until December, 1936, is that correct? A. No, sir.

Q. From the time that the picket line left off, which was, I think you testified, August of 1935, how often did you come to town? A. After the strike was called off?

Q. Yes. A. Well, no more than I had to, because I wasn't able.

Q. Well, I just mean approximately how many times a month? A. A month?

Q. Yes. A. Oh, I would say twice or three times.

Q. Two or three times a month? A. Yes, sir.

Q. Did you used to come in during the day? A. Yes, sir.

Q. Did you always have an opportunity to see members of the union at that time? A. Yes, I had met them, some of them, yes, sir. I came in to some of the meetings.

Q. You never though to go up and—were you in Lowell at any time on those visits? A. In Lowell?

Q. Yes. A. Yes, sir.

Q. What made you finally decide to go up and see Mr. Bateman in December, 1936? A. Well, I figured he wasn't putting none of the men back, they had, none of them, gotten reinstated back, so I figured there wasn't no use, and it was a little while before Christmas and I figured if I could get a check in before Christmas it would be mighty nice.

Q. But you never bothered to go in before then? A. No, sir.

Q. Was there any reason that you were rejected at the Shattuck Denn? A. That is all. They said I couldn't pass the x-ray on my lungs.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You were employed as a miner in June, '35? A. Yes, sir.

Q. At what rate of pay? A. $5.

Q. Do you want your old job back? A. Yes, sir, I would like it.

Q. Do you think your physical condition will permit your working on that job? A. No, I don't think so.

Q. You do not think so? A. Not from what the x-ray shows.

Q. Do you know of any other position in the mine that you can fill? A. Not inside, no, sir. They all have to take that, see, you have to go underground.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) Are there any jobs above ground that you could fill in the mine? A. Well, I have never had no experience on top.

Mr. Persinger: I have nothing else.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

P. C. LYTLE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: P. C. Lytle.

Mr. Kitchel: Mr. Examiner, could we have about a five-minute recess before we start with this witness?

Trial Examiner Kennedy: Yes, we will take a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Direct examination:

Q. (By Mr. Persinger) Mr. Lytle, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. Well, I started to work for the C. & A. Company in 1927, and was there when they merged.

Q. And following the merger how long did you continue to work for the Phelps Dodge? A. Up until June, 1935.

Q. Until the time of the strike? A. Yes, sir.

Q. What was your first job in June, 1935? A. Well, I was repairman.

Q. What was your rate of pay? A. $5.24.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. No, sir.

Q. At no time? A. No.

Q. Following the strike did you ever apply for reinstatement with the company? A. Following the strike?

Q. After the strike was over. A. Yes, sir.

Q. To whom did you apply? A. Mr. Henrie.

Q. Where did you see Mr. Henrie? A. In the general office.

Q. Do you remember when that was? A. Well, it was either in September or October, '35.

Q. What time of day was it? A. About 5:00 o'clock in the evening.

Q. Was anyone present? A. No, sir.

Q. And did—what did you say to Mr. Henrie? A. Well, when I got in to see him he asked me what he could do for me, and I said, "What's the chance to go to work?"

And he said, "You was sick along about the first of that strike, wasn't you, Dave?"

And I said, "Yes, I was sick," I said, "I went to the hospital every day that week until Saturday."

I said, "They took a picture along in the middle of the week." And I said, "I went in to see the result of the picture," and I said, "When I went in Saturday morning, why, Dr. Hunt told me that they couldn't furnish me any more medical attention."

Q. That was after the strike had started? A. Yes, and I asked him, "Why?" And he said, "Well, they had orders from the office." And Pat said that "Did he tell you that?" And I said, "Yes, he told me that."

And he said, "Well, Dave, you come back in tomorrow evening and I will give you an answer."

So I went back the following evening and I didn't get to see him, but the next evening I seen him.

Q. Where did you see him that evening? A. In the general office.

Q. What time of day was it? A. About 5:00 o'clock, or possibly a little after.

Q. Was anyone else present? A. No, sir.

Q. What was said on that occasion? A. When I went in I said, "Well, Pat, what's the verdict?"

And he said, "Well, Dave," he said, "I'm sorry, but I can't do anything for you."

I said, "Well, Pat, that means that I'll never work here again?"

And he said, "Oh, no, no. Don't take it that way."

Q. Was anything further said at that time? A. He told me, he said, "Now, Dave," he said, "personally I'll help you."

He said, "If you know of any place that you can go to work and I can be of any assistance to you, don't be afraid to refer to me," he said, "because I'll help you."

Q. And was that the end of that conversation? A. That was the end of it.

Q. Since that time have you ever re-applied for work? A. No.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 47 the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 47.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Have you been employed since June 10, 1935? A. Yes.

Q. When was the first time? A. Different times.

Q. When was the first time you received employment after that date? A. In January, '36.

Q. Where and by whom? A. At Hillside, Arizona; Hillside Mining Company.

Q. What kind of work did you hire on for? A. Well, I started there as a miner, and was promoted—went on as a repairman after later.

Q. And what rate of pay did you get there as a miner? A. $4.

Q. How long did you work at the $4 rate? A. About five and a half months.

Q. How many days a week? A. Seven days a week.

Q. And then you went on as a repairman? A. Yes.

Q. What did you receive as a repairman? A. Four and a half.

Q. How long after that did you work as a repairman? A. About three and a half months.

Q. Seven days a week? A. Yes.

Q. When did you leave the employ of the Hillside Mining Company? A. When?

Q. Yes. A. In November, 1936.

Q. You left there voluntarily, did you? A. Yes, sir.

Q. Where is the Hillside Mining Company located? A. At Hillside—about 35 miles outside of Hillside in Yavapai County.

Q. Do you know whether or not that company is still operating? A. Well, I don't know. I understand that someone took a leasing bond on it. I don't know whether they have or not.

Q. They were operating at the time you left? A. Oh, yes.

Q. What did you do after November, 1936, when you left the Hillside? A. I didn't work no more until I went to work at the Shattuck in February in '37.

Q. What job did you have when you went to the Shattuck lease? A. Well, I went up mining.

Q. You hired on as a miner? A. Yes.

Q. What rate of pay did you receive? A. Well, I received $5.48 when I started there, and then in a short time they raised it to $5.60. I think I worked one period—I started on the 15th of February, if I remember correctly,

and worked until the 1st day of March at $5.48, and then they raised the wages there to $5.60. I think I worked four days at $5.60 and was put on as a shift boss, and I got $6.60 then for up, I think, until about the 1st of June, and then I got a raise to $7.50, and was laid off the 19th day of June.

Q. You were laid off from the Shattuck lease? A. Yes. There was 37 men laid off on one day.

Q. What? A. There were 37 men laid off when I was laid off.

Q. That was in June? A. '37.

Q. What date in June? A. The 19th of June, in '37.

Q. That was due to reduction in force? A. Yes.

Q. Then what did you do? A. Well, not much of anything. I tried to find a job. That was the hardest thing I had to do.

Q. When was the next job you found? A. I went to Idaho. I worked for six weeks in Idaho.

Q. For whom did you work there? A. I worked for the Sullivan Mining Company.

Q. Bunker Hill & Sullivan? A. No, the Sullivan. It was at the Star Mine.

Q. What job did you have with them? A. I was a timber man.

Q. When did you go to work for them? A. About the 1st of September.

Q. 1937? A. Yes.

Q. What rate of pay did you receive as a timber man? A. $6.25.

Q. $6.25? A. Yes.

Q. How many days a week did you work? A. Six days.

Q. And then you worked there for about six weeks? A. Yes. I got hurt there on the 14th day of October.

Q. Did you receive workmen's compensation after that? A. Yes.

Q. You were injured while in the employ of the Sullivan Company? A. Yes.

Q. How long after that did you receive compensation? A. Two weeks.

Q. Did you attempt to go back to work there? A. No.

Q. You left there after that? A. Yes.

Q. Voluntarily? A. Yes.

Q. You had your job available if you wanted to go back to it? A. Well, I was told not.

Q. Did you apply for reinstatement? A. No.

Q. Is it customary when a man is injured that he then is off the payroll? A. There they have a bonus system. If they have no lost-time accident in a month, he receives $25; and if they have a lost-time accident, that is taken off them and they don't usually go back to work when they have a lost-time accident there.

Q. Well, you never applied for re-employment after your accident? A. No.

Q. You never made any attempt to make—— A. The doctor advised me to get away from it.

Q. Just a minute. You never made any attempt to go back to work there? A. No.

Q. When was it you left Idaho? A. I left Idaho the last day of October, I think.

Q. Then where did you go? A. I came home.

Q. What did you do after that? A. Nothing. I worked on the W. P. A. here. I was on W. P. A.

Q. You haven't worked for anyone else since then? A. No.

Q. Are you working for anyone at the present time? A. What?

Q. Are you working for anyone at the present time? A. W. P. A.

Q. Have you given me the names of all the persons for whom you have worked since June 10, 1935? A. No. I worked eight days at Bagdad, Arizona.

Q. For the Bagdad Copper Company? A. Yes.

Q. That is also in Yavapai County, is it not? A. Yes, sir.

Q. When was that? A. That was in January, '37.

Q. That is after you left the Sullivan—oh, no. A. No. That was after I went—I went back up to Hillside after I quit there, and they had no material. The trucks couldn't go in and out with the concentrates and there was nothing to work with, and so I went over to Bagdad and worked eight days there.

Q. What did you work there as? A. Timber man.

Q. And you left there voluntarily, did you? A. Yes.

Q. How much pay did you receive while you were there? A. Four forty.

Q. How many days a week did they work there? A. I think they worked six days a week. They didn't work on Sundays.

Q. Is that all of the names of the persons for whom you worked? A. That's all.

Q. Do you know John Wrigley? A. John Wrigley?

Q. Yes. Did you work for him? A. Yes, but I received no pay.

Q. How long did you work for him? A. I don't know. I was down there about 10 days, I guess; maybe two weeks.

Q. That is in Lowell? A. Yes.

Q. Were you discharged? A. No, I wasn't discharged. I quit.

Q. You left voluntarily? A. Yes.

Q. Why did you leave? A. Because there was no money in it.

Q. You didn't receive any pay while you were there at all? A. No, sir.

Q. And you say that you were not discharged by Wrigley? A. No.

Q. Did you ever attempt to recover any pay from Wrigley? A. I recovered the money I put in there.

Q. Were you a partner in the business? A. I had $600 in the business.

Q. You got that out? A. Yes.

Q. And then you weren't employed by Wrigley? A. No.

Q. Were you an officer of the union in 1935, Mr. Lytle? A. Yes.

Q. What was your position? A. Vice-President,—no, '35?

Q. Yes. A. No, sir; I was not, until after the strike, I was after the strike.

Q. Are you an officer at the present time? A. No, sir.

Q. You were an officer during a certain period of time, is that it? A. Yes.

Q. After the strike? A. Yes.

Q. Are you a member of the union at the present time? A. No, sir.

Q. You are not a member of the union at the present time? A. No, sir.

Q. How long has it been since you have been a member of the union? A. A year.

Q. Do you have any of the records of the union in your possession? A. No, I have not.

Q. You have no records of the meeting of the union on June 7th or June 8th, 1935? A. I have no records of the union.

Q. Were you Secretary of the union in August of 1935? A. No, sir.

Q. Did you at any time have any record of meetings of the union of June 7th or June 8th, 1935? A. No time.

Mr. Evans: No further questions.

Mr. Persinger: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the union? A. September 16, 1933, here—this local.

Q. And you were in good standing during the strike? A. Yes, sir.

Q. Do you want your old job back at Phelps Dodge? A. I certainly do.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Edge.

JESSE EDGE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Jesse Edge.

Direct examination:

Q. (By Mr. Persinger) Mr. Edge, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. In 1929, in July.

Q. You worked for them for how long? A. Until June 10th, when the strike was called.

Q. You worked straight through from 1929 to the time of the strike? A. With the exception of a time or two off in a week or two.

Q. I cannot understand you.

Trial Examiner Kennedy: Speak out louder.

The Witness: With the exception of one time—one vacation I took. That was all. I worked straight through.

Q. (By Mr. Persinger) In June, 1935, what was your job? A. Motorman.

Q. What was your rate of pay? A. $5.24.

Q. At the time of the strike were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes.

Q. What was the last day that you were on the picket line? A. About August 15th.

Q. After the strike was over did you apply to the company for work? A. No.

Q. Why not? A. Bateman had already told me that I could never work for the company again.

Q. When did he tell you that? A. At about June 22nd, when I went in after my pay slip to get my pay—a little statement; I guess they call them the "pay slip."

Q. That was in Mr. Bateman's office? A. Yes.

Q. Was anyone else present? A. Not in his office, no.

Q. What time of day was it? A. I would say it was sometime in the morning, likely about 10:00 o'clock.

Q. What did you say when you walked into the office? A. I told him what I came after.

Q. What did he say? A. He asked me why I didn't go back to work, why I didn't go back on the job.

Q. What did you say? A. I told him I was out on a strike.

Q. What was the rest of the conversation? A. He told me, if I didn't go back then I would never work for the company again.

Q. Was anything further said at that time? A. No. I would take my chances on that.

Q. As a result of that conversation you have never applied for work? A. I didn't go back to apply for work. He told me it would be no use.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 48 the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 48.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Are you employed at the present time, Mr. Edge? A. Yes, sir.

Q. For whom are you working? A. Shattuck Denn Mining Company.

Q. What is your job with the Shattuck Denn? A. Miner.

Q. What is your present rate of pay? A. $5.48.

Q. $5.48? A. Yes, sir.

Q. How many days a week are you working now? A. Six days.

Q. When did you first go to work for the Shattuck Denn? A. July 23rd of this year—I mean of last year.

Q. In 1937? A. 1937.

Q. And were you hired as a miner? A. Yes.

Q. What was your rate of pay at the time of the strike? A. $6.24.

Q. Did your rate ever exceed that any time while you were working for them? A. No.

Q. Have you been employed continuously by the Shattuck Denn from July, 1937, to date? A. I have, yes.

Q. How did it happen that you did not picket after August 15th? A. I was working on the E. R. A.—that is the relief, and I had my time to put in out there, and it just so happened I wasn't on the picket line out there the last few days.

Q. Whereabouts were you working on the E. R. A.? A. In the Sulphur Springs Valley, that is about 20 miles out.

Q. How long did you stay on that? A. Until the W. P. A. set-up came on and I was on that until in 1935—I mean '36.

Q. May of 1936? A. Yes.

Q. Then were you on relief continuously from August, 1935, to May of 1936? A. With the exception of two weeks, I worked on the streets in Lowell for the Tempe Stone Company. It was a short job and I got two weeks' work there.

Q. Do you mean the Phoenix-Tempe Stone Company? A. Yes, I worked two weeks there.

Q. How much were you paid by them per day? A. $4 a day.

Q. And you worked how many days in that two weeks' period? A. About 11 days I worked for them.

Q. Did you have any other employment other than relief work up to May, 1936? A. No.

Q. After May, 1936, did you obtain any employment? A. No.

Q. Did you continue on relief? A. No, I was out of the state for a while looking for work and I came back and went back on the relief.

Q. When did you leave the state? A. About May 28th.

Q. 1936? A. 1936.

Q. Where did you go, Mr. Edge? A. I was in New Mexico, Colorado, Wyoming.

Q. Were you seeking employment at that time? A. I was seeking employment, yes, at that time.

Q. When did you return? A. September of '36—September.

Q. And you received no work during that period of time? A. No work, no.

Q. When you returned in September, 1936, did you obtain employment? A. I went back on the W. P. A.

Q. And how long did you stay on W. P. A.? A. Until I got a job at the Denn, in July.

Q. Of 1937? A. Of '37, yes.

Q. When did you first appy for employment with the Shattuck Denn? A. About the 1st of June, I would say, when I started rustling there.

Q. You never made application to the Phelps Dodge? A. No.

Q. Then you have been working continuously at the Shattuck Denn Mining Company since July 23, 1937? A. I have.

Q. Where were you working at the time that you walked out in June of 1935, what shaft? A. Junction.

Q. Were you ever employed by the Shattuck Denn Mining Company at any time prior to July 23, 1937? A. No.

Q. Was June the first time you ever applied for employment there? A. Yes, June.

Q. June of '37? A. About June—about June, somewhere around there when I first made application at the Denn.

Q. How long a period, to your knowledge, had the Shattuck Denn been hiring men during the year 1937? A. I couldn't tell you.

Q. Were they hiring earlier that year? A. I believe they were. I know some of the boys did go on before that.

Q. But you didn't make any application, make any attempt to get work there? A. No.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What is your present position? What job are you holding down at the Shattuck Denn? A. Miner.

Q. And you were a motorman at the Phelps Dodge, is that right? A. Yes.

Q. You are now getting $5.48 at the present job? A. Yes.

Q. Do you want your old job back at Phelps Dodge? A. Well, at the present rate they pay the motorman, I would prefer the job at the Phelps Dodge.

Q. If you had to go back at $5.24, would you take that in preference to what you have got now? A. I would not.

Q. When did you join the union? A. In 1934, I believe it was.

Q. And you continued your membership up to the time of the strike? A. Yes.

Q. And through the strike? A. Yes.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

HERSCHEL J. MONTGOMERY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Herschel J. Montgomery.

Direct examination:

Q. (By Mr. Persinger) Mr. Montgomery, do you know when the C. & A. and the Phelps Dodge merged? A. I don't know the exact year that was. About '30, I think. Around in there some place.

Q. Where were you working at that time? A. At the concentrator.

Q. That was owned and operated by what company? A. Phelps Dodge.

Q. And since that time how long have you worked for Phelps Dodge? A. Ever since that time, up until the time of the strike.

Herschel J. Montgomery—For National Labor Relations Board—Direct.

Q. When did you originally go to work for Phelps Dodge? A. In 1909.

Q. You worked off and on from that time up until the merger? A. I worked from 1909 when I started——

Q. Just a moment, Mr. Montgomery. There is no use going into details. A. There was an interval there.

Q. What is that? A. There is an interval there. I worked some—from 1909 until '10, March, '10, and then I went back east. I came back here again in '15 and I worked all the time then for the Phelps Dodge, with the exception of about six months that I worked for the Shattuck office during the war.

Q. Were you employed by the company in June, 1935? A. I was.

Q. At that time were you a member of the union? A. Yes, sir.

Q. What was your job at that time? A. I was repairing cars in the boiler shop.

Q. What was your rate of pay? A. $5.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. I was.

Q. What was the last day you were on the picket line? A. Well, I don't know the exact day. It was about two weeks, or something like that, before they pulled the strike off.

Q. Since the strike, have you ever applied for reinstatement with the company? A. Yes, sir.

Q. When was the first time? A. About September of '35, the first part.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. Was anyone else present? A. No, I don't think there was.

Q. What time of day was that? A. Well, I would say between 10:00 and 11:00, around in there some place.

Q. In the morning? A. Yes, sir.

Q. And what was said? A. He told me there was nothing doing; that I needn't come back, he didn't need anybody at that time.

Q. That was all that was said? A. That was all that was said at that time.

Q. Have you applied since? A. Yes, sir, I have applied off and on up until, oh, about September, '36.

Q. To whom have you applied off and on? A. Mr. Bateman and also Mr. Henrie.

Q. Did Mr. Bateman ever give you any encouragement, say you might get on later? A. Well, they kind of passed me back and forth from one to the other up until September of '36, and Mr. Bateman told me that the books was closed as far as I was concerned.

Q. Where did you see Mr. Bateman at that time? A. In his office.

Q. And what time of day was it? A. Well, about the usual time, between 10:00 and 11:00; I generally went in there in the mornings.

Q. Was anyone else present at that time? A. I don't think so.

Q. What was said on that occasion? A. Well, that was about all they told me. When I went in for work he says, "As far as you are concerned, the books are closed."

Q. That was all that was said? A. Yes.

Q. Have you applied since? A. No.

Mr. Persinger: I offer in evidence as Board's Exhibit 49 the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 49.)

Mr. Persinger: Take the witness.

Herschel J. Montgomery—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Evans) Mr. Montgomery, you were first employed at the Copper Queen about May 12, 1909, were you not? A. I don't remember. It was around about May, somewhere about there.

Q. And then you worked until February, 1910? A. Well, I went home in March. That is the reason I remember it.

Q. And then you quit and went home? A. I quit at that time.

Q. And you came back in '17? A. I came back in '15.

Q. When did you first go to work for the company after that? A. June, '15.

Q. Are you sure about that? A. About the middle of June in '15.

Q. Are you sure it wasn't July, '17? A. No, sir; it was '15.

Q. And you worked until June, 1918, when you were discharged? A. No, I went to work in '15, and then, as I say, there was an interval of about six months I worked in the Shattuck office, that was in '17, during the war.

Q. Oh, you worked for the Shattuck Denn? A. Yes, about six months during '17.

Q. You left the employment of the P. D., and then went to work for the Shattuck? A. Yes, for about six months.

Q. And then you went back in '18— A. I went back to the P. D.

Q. And about June, 1918, you were discharged, were you not? A. I don't remember the date.

Q. You were discharged some time in 1918? A. I had —yes, I have had some discharge slips.

Q. Well, I am asking you whether you weren't discharged about the middle of 1918? A. I don't remember the date. I was handed two or three of those discharge slips.

Q. You left the employ of the company at that time? A. I was only off for a few days.

Q. Then you didn't go back to work until October of 1918, did you? A. When was that you said I was handed that slip?

Q. June of 1918. A. And I didn't go back until October?

Q. That is right. A. Now, maybe that was at the time I was at the Shattuck office. No, it was during the war. No, I was never discharged that long.

Q. And isn't it true— A. (Interrupting) My discharges never lasted only a few days at a time.

Q. Isn't it true that in February, '21, you were again discharged? A. I don't think so.

Q. You don't think so? A. No, sir.

Q. And weren't you—you were employed as a watchman in 1931 and '32, were you not? A. Yes, I was watching all the time of the depression.

Q. And you were transferred then to the job of boilermaker's helper in 1933, were you not? A. Well, when they started to pick up, I was.

Q. And prior to that time you had been warned several times about leaving your job as watchman and going over to Warren and doing work around your house, had you not? A. No, sir, I had not. I had permission to go over there.

Q. And wasn't the reason you were transferred to boilermaker's helper, because you weren't taking care of your duties as a watchman? A. No, sir, it was not.

Q. It was not? A. No, sir.

Q. You say you were never warned about leaving your job as watchman and going over to Warren? A. The Chief Watchman gave me permission to go over to Warren and put in that pipeline.

Q. Did he give you permission every time you went to Warren? A. He told me to go over and water my place and put in the pipeline while I was watering.

Q. Who was it told you that? A. Frank Salmon.

Q. As a matter of fact, you were in the habit of going over there during the day, were you not? A. I would go over there when the shift was going off.

Q. You would never go over there in the morning? A. I didn't go down in the morning.

Q. You wouldn't go over there until the afternoon? A. The afternoon, after 3:00 o'clock.

Q. Then you were discharged again on July 3, 1934, were you not? A. No, sir,—Oh, yes, for Union activities.

Q. On the job? A. On the job.

Q. And then you were re-hired on July 20, 1934? A. Now, in July, I went back to work; I was reinstated, not re-hired, reinstated.

Q. You were discharged in July of 1934, were you not, Mr. Montgomery? A. I was given that blank, but I didn't draw my time.

Q. Nevertheless, you were discharged? A. I was reinstated.

Q. Well, you understood, Mr. Montgomery, in July of 1934 you were discharged, were you not? A. Yes.

Q. Then, after your case was taken up with the management, you were re-hired, or reinstated, either way? A. Put back to work.

Q. And at that time Mr. Henrie told you that that was your last chance with the company, did he not? A. I don't remember Mr. Henrie saying anything of the kind.

Q. Have you been employed at all since June, 1935? A. Been on the WPA.

Q. Continuously? A. Well, outside of about three or four weeks, I worked for Casson.

Q. That is on the bridge job at Douglas? A. Yes.

Q. When did you go to work for Casson? A. That was in, I think, July, '36.

Q. And how long did you work for him? A. Three or four weeks.

Q. What rate of pay did you receive? A. $8.00.

Q. A day? A. A day.

Q. How many days a week? A. 5.

Q. Did you leave that employment voluntarily? A. No.

Q. How did you happen to leave there? A. Because they laid off a bunch of men. Had no work for them, no place for them.

Q. Now, between June, 1935, and the time you went to work for Casson, were you employed? A. On the WPA?

Q. No other employment except for the WPA work? A. No.

Q. How many days a week were you working—or, rather, a month, did you work on the WPA job? A. Well, at first they was giving us $16.00 a month for single fellows, and then we had to work that out, and then they changed it to $50.00 a month, and then $68.00 a month.

Q. That was between the time you left the employ of the Phelps Dodge and the time you went to work for Casson? A. Yes.

Q. Now, did you work at all after you left the employ of Casson? A. Well, I have had jobs a few days at a time, is all; just temporary.

Q. Who was the first person you worked for after you left Casson's employ? A. Let's see. I think it was Leonard, over in Tucson. I worked three or four days for him.

Q. What kind of work was he doing? A. Carpenter work.

Q. You only worked three or four days for him? A. Yes.

Q. About when was that, about what time? A. Let's see. That was in '36, too, I think.

Q. And then who did you work for? A. Nobody.

Q. You haven't worked for anybody since then? A. Well, I had a little painting job down at Warren.

Q. How long did that last? A. Oh, that was just for Dr. Lumvaugh, painting a couple of rooms for him.

Q. Have you been on WPA work since that time? A. Yes.

Q. How many days a month? A. 11.

Q. And you are making about how much a month? A. $44.00.

Q. $44.00 a month? A. Yes, sir.

Q. You have been earning, then, $44.00 a month practically continuously since you left Casson's employment; is that right? A. Yes.

Q. You are not working at the present time? A. No, WPA.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) Mr. Montgomery, do you have a pocketbook? A. I have.

Q. May I see it? A. The paper is inside.

Mr. Persinger: I will read into the record what appears to be printed in gold leaf——

Mr. Evans: If the Court please, we object to anything being read into the record until it has been introduced in evidence or marked for identification in some manner.

Mr. Persinger: I cannot very well introduce the pocketbook in evidence, Mr. Examiner.

Trial Examiner Kennedy: What is it? What is the point?

Mr. Persinger: That is why I want to read it.

Mr. Kitchel: Show it to the Examiner.

(The document referred to was passed to the Examiner.)

The Witness: The paper is inside, Mr. Examiner. You can take that blue paper out and read it.

Trial Examiner Kennedy: Is there any objection to that being read into the record?

Mr. Evans: Yes. We object to it upon the ground we do not know when that was presented to Mr. Montgomery.

Mr. Persinger: Well, then, in order to lay a foundation, I will show counsel the letter, which is on the letterhead of Phelps Dodge Corporation, dated May 10, 1935. Apparently the signature is mimeographed, but I am not sure of that. It seems to be more or less a form letter.

Mr. Evans: Why don't you introduce the letter in evidence?

Mr. Persinger: Well, I am going to.

Mr. Evans: We object upon the grounds it is incompetent, irrelevant and immaterial.

Mr. Persinger: I think it has some bearing on the cross-examination of counsel.

Trial Examiner Kennedy: Ask him to identify it.

Q. (By Mr. Persinger) Did you receive that letter? A. I did.

Q. At the time you received this letter, did you receive this billfold or pocketbook? A. They came together.

Q. If you know, is that a more or less customary reward from the company? A. They pass them out to anybody with 10 years' continuous service without a lost time accident.

Mr. Persinger: I will offer the letter as Board's Exhibit No. 50, and I wish to read into the record the inscription on the billfold.

Trial Examiner Kennedy: Is there any objection to the letter?

Mr. Evans: No, we have no objection to the letter.

Trial Examiner Kennedy: The letter may be received in evidence as Board's Exhibit No. 50.

Herschel J. Montgomery—For National Labor Relations Board—Recross.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 50.)

Trial Examiner Kennedy: You may read the inscription on the billfold.

Mr. Persinger: "Presented by the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, to Mr. H. J. Montgomery, in recognition of 10 years' service without a lost time accident."

Nothing further.

Trial Examiner Kennedy: Any further questions?

Recross examination:

Q. (By Mr. Evans) I believe you stated, Mr. Montgomery, that it was the general practice of the company to present such letters and billfolds to any employees—— A. 10 years continuous service.

Q. Just a minute. Let me complete my question, please. (Continuing)—who have completed 10 years' service with the company without a lost time accident? A. Yes, 10 years' continuous service without a lost time accident.

Mr. Evans: That is all.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you want your old job back at Phelps Dodge?

The Witness: Yes, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Witness excused.

(Witness excused.)

Mr. Persinger: Mr. Morris.

If the Examiner please, it has been stipulated that this letter, marked Board's Exhibit No. 50, may be withdrawn, because the witness would like to keep it.

Mr. Montgomery: If you need that, keep it. I can do without it.

Trial Examiner Kennedy: Do you want to withdraw it, or leave it in?

Mr. Persinger: I think the inscription on the billfold is sufficient.

Trial Examiner Kennedy: Very well. It may be withdrawn.

J. M. Morris, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your name, please?

The Witness: J. M. Morris.

Direct examination:

Q. (By Mr. Persinger) Mr. Morris, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. I was employed—I was already working at the mines when the merger took place.

Q. You were employed first at the C. & A.? A. Yes, sir.

Q. When did you go to work for the C. & A.? A. In June, '26.

Q. And you were employed at the time of the merger with Phelps Dodge? A. Yes, sir.

Q. Were you laid off at the time of the merger? A. No, sir.

Q. You continued to work for Phelps Dodge? A. Yes, sir.

Q. When did you cease working for Phelps Dodge? A. June 10th.

Trial Examiner Kennedy: A little louder, please.

The Witness: June 10, '35.

Q. (By Mr. Persinger) That was the time of the strike? A. Yes, sir.

Q. In June, '35, what job did you have? A. Powderman.

Mr. Kitchel: A little louder, please.

The Witness: Powderman.

Q. (By Mr. Persinger) What was the rate of pay? A. $5.00 a day.

Trial Examiner Kennedy: How much?

The Witness: $5.00.

Trial Examiner Kennedy: $5.00.

Q. (By Mr. Persinger) Did you go out on strike? A. Yes, sir.

Q. At that time were you a member of the Union? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line, approximately? A. I was on the picket line every day for about two weeks.

Q. Were you on at all after that? A. No, no; not after that.

Q. And after the strike was called off did you apply for work? A. Yes, sir.

Q. When was that? A. I didn't understand the question, please.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: About the 1st of October, '35.

Q. (By Mr. Persinger) To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. At his office.

Q. What time of day? A. Right after noon; just after noon.

Q. Was anyone else present? A. Not that I seen; no, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance of going back to work.

Q. What did Mr. Bateman say? A. He asked me when I worked for the company—asked me my name and when I worked for the company, and when I last worked for them, and told me, "Nothing doing".

Q. Was anything further said at that time? A. I beg your pardon.

Q. Was anything further said at that time? A. Nothing.

Q. Since that time have you applied for work with the company? A. Not since about the first of October.

Q. That's the only time? A. That's the only time.

Mr. Persinger: I offer as Board's Exhibit No. 51, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 51.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Morris, how long were you a member of the Union? A. From the time it was organized here in Bisbee; I don't remember the date.

Q. Did you ever hold any office in the Union? A. No, sir.

Q. Are you a member of the Union at the present time? A. Yes, sir.

Q. An active member? A. Well, I wouldn't say an active member, no.

Q. Are you a paid-up member? A. Yes, in good standing.

Q. You say that when you saw Mr. Bateman, that was around the first of October, 1935? A. Yes, sir.

Q. And he asked who you were? A. Yes. He asked me my name.

Q. How long you had worked for the company? A. About that, yes.

Q. Mr. Bateman did not know you or recognize you? A. No. He asked me my name.

Q. Where were you working at the time that you went out on strike; what shaft? A. Campbell shaft.

Q. Have you been in the district the entire time since October, 1935? A. Yes, sir.

Q. Have you been employed at any time during that period? A. Nothing except relief work.

Q. You have never made an application for employment since October 1, 1935? A. No, sir.

Q. Have you ever made application at the Shattuck Denn? A. Yes, sir.

Q. Have you been rejected? A. Yes, sir. They gave me a job and the doctor turned me down.

Q. What was the reason that the doctor turned you down? A. I don't know.

Q. Did you ever ask? A. I went to see the doctor and he was not in his office, and I never went back any more.

Q. When was that? A. Oh, it was something over a year ago. I don't remember the date; something over a year ago.

Q. Did you ever go back again and apply for employment there? A. No, sir.

Q. Did you feel that you could not pass the physical examination? A. Yes. They turned me down once, and I figured that he would do the same thing again.

Q. You say that you were in the picket line regularly for about two weeks after you walked out, which was June 10, 1935. Is that correct? A. That's right.

Q. So that you did not picket, then, after June 25, 1935? A. No. I was taken off the picket line by our local officials, and put in strike headquarters.

Q. Were you working on relief at that time? A. Yes, sir.

Q. Have you been employed by anybody since June 10, 1935? I mean, have you been employed by anybody other than the relief work? A. I have had 6 days' work with the Highway Department since then, and I have managed to get just a very small job once in a while.

Q. How long would they last, a day or so? A. A couple of days. I worked for the Shell Oil Company, oh, possibly ten days.

Q. When was that? A. Last summertime.

Q. The summer of '35? A. No, this last summer.

Q. This last summer. When did you work for the Highway Department? A. That was last September; some time in September.

Q. Have you been examined by a doctor recently? A. No, sir.

Mr. Kitchel: That is all, I think.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will you take your old job back if it is offered to you, at Phelps Dodge?

The Witness: I would.

Trial Examiner Kennedy: Do you feel your physical condition would permit you to handle that work?

The Witness: I think it would; yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Guess.

Leonard Guess—For National Labor Relations Board—Direct.

LEONARD GUESS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is the name, please?

The Witness: Leonard Guess.

Direct examination:

Q. (By Mr. Persinger) Mr. Guess, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. I couldn't give the exact date. I worked—Well, I worked for the Phelps Dodge since the merger.

Q. Had you worked for the C. & A. before that? A. Yes, sir.

Q. About how long had you worked prior to the merger? A. I couldn't say for sure; about '26, '27.

Q. After the merger, how long did you continue to work? A. Until January 14, 1935.

Q. Until January 14, 1935? A. Yes, sir.

Q. Why did you leave the company on January 14, 1935? A. I bought a restaurant down at Douglas,—a half interest.

Q. Speak a little louder, so the Reporter can get it. A. I bought a half interest in a restaurant in Douglas.

Q. At the time of the strike were you a member of the Union? A. Yes, sir.

Q. Were you ever on the picket line? A. No, sir.

Q. After the strike did you ever apply for work with the company? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. When? A. Oh, about two weeks after the strike.

Q. Where did you see Mr. Bateman? A. In his office.

Q. Was anyone else there? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance to get to work.

Q. What did he say? A. He said I would have to come back later; he would have to look it up and see.

Q. Did you go back later? A. Yes, sir.

Q. How much later? A. About four days.

Q. Did you see Mr. Bateman? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. Was anyone else there at that time? A. No, sir.

Q. What time of day was it? A. I would judge around 8:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. What was said on that occasion? A. He said I didn't "incorporate with the company" when I was working; he couldn't do nothing for me.

Q. Did he say what he meant? A. No, sir.

Q. Do you know what he meant? A. No, sir; not for sure. I had a good idea.

Q. When did you first join the union? A. Well, I was one of the first ones. I don't remember just when that was—when they started.

Q. Did you ever hold office in the union? A. No, sir.

Q. Were you a union member when you left the employ of the company in January of 1935? A. Yes, sir.

Q. Were you a union member in September of 1935? A. Yes, sir.

Q. After the strike? A. Yes, sir.

Mr. Persinger: I offer as Board's Exhibit No. 52 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 52.)

Mr. Persinger: Take the witness.

Leonard Guess—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Evans) Mr. Guess, you voluntarily left the employment of the company on January 14, 1935, I believe you stated? A. Yes, sir.

Q. You were not employed by the company at any time thereafter? A. No, sir.

Q. You did not apply for employment at any time until this occasion several weeks after August 24th, I believe you stated? A. No, sir.

Q. You left the employ of the company in order that you could purchase a restaurant in Douglas? A. Yes, sir.

Q. And go into the restaurant business, is that correct? A. Yes, sir.

Q. How long were you in the restaurant business in Douglas? A. About a month.

Q. What did you do, dispose of your restaurant? A. Went broke.

Q. Were you employed at any time, then, prior to June 10, 1935, other than the restaurant business? A. No, sir.

Q. Have you been employed at any time since that date? A. Yes, sir.

Q. When was the first time since that date that you have been employed? A. Well, it was in '36; but I couldn't say what month,—at the Denn.

Q. You went to work for the Denn in January, the latter part of January, 1936, did you not? A. I couldn't say for sure.

Q. It was in the early part of 1936, however? A. Yes, sir, I believe it was.

Q. That is the Shattuck Denn Mining Company? A. Yes, sir.

Q. What job did you have there? A. Mucker.

Q. Have you continued to work there as a mucker since that time? A. No, sir.

Q. Was your classification ever raised from mucker while you were working for Shattuck Denn? A. Yes, sir.

Q. What wages did you draw when you first went to work for the Shattuck Denn? A. Four-forty, I believe.

Q. How long did you continue to draw that wage? A. About two months.

Q. Then what pay rate did you go on? A. Six dollars.

Q. In what classification? A. Shaft man.

Q. How long did you continue to work after that for the Shattuck Denn? That is, as shaft man? A. Oh, about a month.

Q. Then what happened? A. I quit.

Q. What month was it that you quit? A. Well, around August of 1936.

Q. Was it around August of 1936? A. Around August of 1936.

Q. So you worked about eight or nine months at the Shattuck Denn, did you not? A. No, sir; I didn't work that long.

Q. Are you sure? A. Yes, sir.

Q. How long would you estimate you did work there? A. I figured around four months. It could have been a little longer than that? A. I couldn't say for sure.

Q. Why did you leave the Shattuck Denn? A. I thought I had a better job.

Q. Did you have another job when you left there? A. Yes, sir.

Q. W[redacted] that? A. Tularosa, New Mexico.

Q. So [redacted]nt over to Tularosa, New Mexico? A. Yes, sir.

Q. For whom did you work there? A. George Orr Construction Company, at El Paso.

Q. How long did you work for the construction company? A. I would say about two months.

Q. What rate of pay did you receive? A. Forty cents an hour.

Q. How many hours a day? A. Forty hours a week, I believe.

Q. Forty? A. Yes, sir. I think that is what it was.

Q. Then you left the employ of the construction company in about October some time of 1936? A. Yes, sir; somewheres along there, I guess.

Q. And then what did you do? A. Come here.

Q. Why did you leave the employ of the construction company? A. They finished the job.

Q. What did you do after you came back to Bisbee? A. Went to Patagonia, Arizona.

Q. What did you do at Patagonia? A. Worked at the Ventura Mining Company.

Q. The Ventura Mining Company? A. Yes.

Q. About what date did you go work for the Ventura Mining Company? A. I couldn't say; '36 some time.

Q. Was it before Christmas of '36? A. Yes, sir.

Q. How long did you work for them? A. Oh, about three months.

Q. What kind of a job? A. Timber man helper.

Q. What rate of pay did you receive there? A. Four and a half a day.

Q. And then did you leave the Ventura Company voluntarily? A. No, they shut down—run out of money.

Q. Then what did you do? A. Come back here.

Q. About what time of the year was it that they shut down? A. I couldn't say.

Q. It was after the first of the year, 1937, was it? A. Yes, sir.

Q. What did you do after you came back to Bisbee? A. I went to work for the Shattuck leaser.

Q. Shatfuck leaser? A. Yes, sir.

Q. About what month in 1937 was it that you went to work there? A. I couldn't say that.

Q. It was early in 1937, was it? A. Yes, sir; pretty early.

Q. Was it almost immediately after you came back from the Ventura Mining Company? A. A little while.

Q. It was? A. Yes, sir; a little while after.

Q. What kind of a job did you have at the Shattuck lease? A. Mucking.

Q. What rate of pay? A. Four and a half, I believe.

Q. How long did you work at the Shattuck lease? A. Well, I worked off and on for about a month and a half, I guess. They would lay me off and hire me back for a while. I couldn't say exactly how much time.

Q. Then did you leave there voluntarily? A. No, sir.

Q. What did you do then? Did they lay you off? A. Yes, sir.

Q. Then what did you do? A. I went to work for the Boras Mining Company.

Q. About when was it that you went to work for the Boras Mining Company? A. Well, that was in '37.

Q. In the Spring? A. Yes, it was.

Q. Have you worked for the Boras Mining Company since that time? A. Off and on, yes, sir.

Q. What rate of pay did you receive when you went to work for them? A. Four and a half.

Q. Is that the highest rate of pay you received at any time while you were working for them? A. No, sir. I received $5.

Q. When you went to work for them? A. Yes, sir.

Q. And what classification was that? A. Mucker.

Q. And did you ever work for them as a miner? A. Yes, sir; working now as a miner.

Q. Working as a miner. And what rate of pay are you receiving at the present time? A. Five and a half.

Q. And you have been employed with them regularly, in so far as their employment is concerned, since some time about the Spring or Summer of 1937, is that correct? A. Yes, sir.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: If the Examiner please, I seem to have run out of witnesses.

Trial Examiner Kennedy: We will have this discussion off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: Gentlemen, we will stand in recess until 9:00 o'clock tomorrow morning.

(Whereupon, at 4:35 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., Wednesday, February 2, 1938.)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL No. 30.	Case No. XXI-C-266

Room 2
Cochise County Court House
Bisbee, Arizona
WEDNESDAY, FEBRUARY 2, 1938

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.
Before:

THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondent.

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Wilcox, will you take the stand, please.

Joseph A. Wilcox—For National Labor Relations Board—Direct.

JOSEPH A. WILCOX, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: Joseph A. Wilcox.

Direct examination:

Q. (By Mr. Persinger) Mr. Wilcox, are you here in answer to a subpoena? A. I am.

Q. What is your business or occupation? A. Mining Engineer.

Q. Where are you employed at the present time? A. Shattuck Denn Mining Corporation.

Q. How long have you been employed by Shattuck Denn? A. A little over 11 years.

Q. Have you been a mining engineer that entire time? A. Part of the time I was helping the engineer.

Mr. Kitchel: I can't hear.

Trial Examiner Kennedy: You will have to speak up a little louder.

The Witness: Part of the time I was engineer's helper.

Q. (By Mr. Persinger) Are you familiar with the history of the Shattuck Denn Company, that is, when it was formed? A. Well, relatively; not exact dates, or anything of that kind.

Q. Well, approximately when was the company organized? A. I believe it was sometime about 1904, as the Denn-Arizona Copper Company and the Shattuck-Arizona Copper Company, two separate organizations. They merged, I believe it was, in 1925, as the Shattuck Denn Mining Corporation.

Joseph A. Wilcox—For National Labor Relations Board—Direct.

Q. At the present time, how many different mines are being operated by Shattuck Denn? A. Well, the Denn mine is operated now, and they own the Shattuck mine up in the hills here, and they have an interest in another mine at Winkleman, but we have no operating connection with that.

Q. Has the mine been shut down for any period of time since 1925? A. Once.

Q. When was that? A. From 1932 until 1934.

Q. How long before the actual shutdown had production ceased? A. I would say approximately 10 months.

Q. Did production begin in 1934, when the mine was reopened? A. Yes. We prepared right away for production. I think actual production started about the first of 1935.

Q. Is there a certain minimum price for copper which is necessary in order to operate the Shattuck Denn Mines profitably? A. Well, evidently they will operate only at a profit, and I would say when copper gets so low they will be apt to close down the mine, or stop production at least.

Q. Could you estimate what that minimum price may be, from your experience in the past? A. Under present conditions, if copper went very much lower it might close down.

Q. Just what do you mean by "very much lower"? Would a cent be very much lower? A. Yes, a cent a pound on copper is a lot.

Q. In other words, you probably could not operate profitably at a price of 9 cents? A. Probably not.

Q. How many persons are employed at the present time at Shattuck Denn? A. Approximately 200.

Q. It has been testified here that the Shattuck Denn Mines follow exactly the wage rates of the Copper Queen. Is that correct? A. That is correct.

Q. What sort of a ventilating system do you have in the Shattuck Denn Mines? A. We have a forced draft ventilation, blowers.

Q. And how long has that system been in operation? A. Oh, about two months. Not quite two months, maybe.

Q. And prior to that time how were the Shattuck Denn Mines ventilated? A. We used air from the Phelps Dodge Corporation.

Q. And was that air ever hot and somewhat stale when it reached the Shattuck Denn Mines? A. Yes, that air was quite warm.

Q. What is the geographical location in relation, say, to the Junction of the Shattuck Denn Mines? A. The Denn is approximately 2500 feet in a northeasterly direction from the Junction shaft.

Q. And where is the Shattuck shaft? A. The Shattuck shaft is in the southwest part of the district; almost directly south of Bisbee, the City of Bisbee, on the Hill up here.

Q. And about how far from Bisbee? A. About half a mile, I would say, directly south of the City of Bisbee.

Mr. Persinger: I think that is all.

Trial Examiner Kennedy: Cross examine.

Cross examination:

Q. (By Mr. Kitchel) Mr. Wilcox, what is your present position with the Shattuck Denn? A. I am Chief Engineer.

Q. How long have you held that position? A. Since 1928.

Q. And who is in charge of the operations of the Shattuck Denn Mining Company? A. Mr. J. G. Flynn is General Manager.

Q. Do you, Mr. Wilcox, in your position as Chief Engineer, have anything to do with the determination of the policy of the company. A. I have none whatever.

Q. Do you have anything to do with the determination of the employment policy of the company? A. I have none whatever.

Q. Do you have anything to do with the determination of the rate of production of the company? A. Well, possibly indirectly, only through argument.

Q. But the amount of copper to be produced in any one month is to be determined by Mr. Flynn and—— A. (Interrupting) And his associates.

Q. Associates? A. Yes.

Q. You stated, I believe, that the Shattuck Denn closed down from 1932 to 1934. Was that an unusual circumstance in the mining industry in Arizona during those years? A. That would be a rather personal answer.

Q. Well, maybe I should make my question a little clearer: You are familiar with some of the other mining centers in the state, for instance, the Globe-Miami district? A. Yes, sir.

Q. To your knowledge, were the large companies up there operating during that period? A. Not to any extent, to my knowledge.

Q. Isn't it true, Mr. Wilcox, that all of them were merely maintaining a skeleton force during that period? A. I would consider it as such.

Q. You have been asked concerning the ventilation at the Shattuck Denn Mining Company. Is it not true, Mr. Wilcox, that just recently the Shattuck Denn Mining Company has expended in the neighborhood of $20,000 for the purpose of installing a new ventilation system? A. We have.

Mr. Persinger: Excuse me, Mr. Examiner. If I may interrupt counsel: I might say that I would be glad to stipulate that they have a very fine ventilation system now.

Mr. Kitchel: I would rather bring it out by questioning.

The Witness: I didn't hear all of that.

Trial Examiner Kennedy: It is not a question. You have already answered his question.

Q. (By Mr. Kitchel) Are you familiar with the working conditions in the Phelps Dodge mine? A. I am not.

Q. Would you be able to state whether or not the Shattuck Denn working conditions are any worse or any better than the working conditions in the Phelps Dodge mine? A. I would not.

Q. Has the Shattuck Denn been operating continuously since 1934? A. Yes, sir.

Q. At what time did you go on a 6-day week? A. I believe it was about the middle of last November. We stopped all Sunday operations.

Q. Prior to that time you were working on a 7-day basis? A. Every other Sunday we would work.

Q. In other words, it was an alternate 6- and 7-day week? A. Yes.

Q. When did that start? A. I don't believe I have any idea when the dates for that was.

Q. Was it in 1935, do you think? A. No. In 1935 we were working only 5 days a week; that is, part of 1935, at least.

Q. To your knowledge, was that also true of the Phelps Dodge? A. I couldn't say definitely what the Phelps Dodge were doing at that particular time.

Q. At the present time the Shattuck Denn is operating on a 6-day basis? A. Yes, sir.

Q. Is it not true, Mr. Wilcox, that recently a new ore body of relatively substantial proportions has been developed at Shattuck Denn? A. Yes, sir.

Q. Have you any reason to believe that at the present price of copper there should be any interruptions of the operations within the immediate future? A. Well, I have no personal knowledge of any reason of that kind; but, as I said before, I don't have anything to say about the policies of the company.

Q. Do the ores which are mined by the Shattuck Denn contain silver and gold values? A. Small amounts; yes, sir.

Mr. Kitchel: I believe that is all, Examiner.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Mr. Wilcox, would you know whether or not any particular employee of Shattuck Denn Company is in imminent danger of losing his job? A. I don't know of anybody that is.

Q. Would you know if there was such a situation? A. Very likely I would.

Q. Are you familiar with the parties who have been named in the complaint, who have testified in this case? Do you know who they are? A. Is this the man that represents the local union in this case?

Q. I just wondered if you know the names of the men who testified in this case, or not? A. I wasn't at any of the hearings. I don't know just who all testified.

Q. You say you have about 200 employees at Shattuck Denn? A. Yes, sir.

Q. Do you know all of those who formerly worked for Phelps Dodge? A. Well, I know a great many of them.

Q. Do you know any of them who are in imminent danger of losing their position at Shattuck Denn? A. I don't know of any reason why they should.

Q. Do you know whether or not Shattuck Denn has any contracts or commitments that would require it to produce ore for the next six months? A. I am not familiar with that.

Trial Examiner Kennedy: You are not familiar with that.

Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Thank you, Mr. Wilcox.

I may state at this time, Mr. Examiner, for the record, that the General Manager of Shattuck Denn is, I understand, ill and out of the community, and I had hoped to have him here, but he is not obtainable.

Mr. Persinger: Call Frank Peterson.

FRANK PETERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Frank Peterson.

Direct examination:

Q. (By Mr. Persinger) Mr. Peterson, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. January, '33.

Q. And how long did you continue to work at that time? A. Up until the day of the strike.

Q. And what job were you first employed at? A. Mucker.

Q. And what was your job just before the strike? A. Miner.

Q. At $5 a day? A. Yes.

Q. Were you a member of the union at the time of the strike? A. I was.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes.

Q. Since the strike have you at any time applied for reinstatement? A. Yes.

Q. When? A. About a week after the strike, after the strike was called off.

Q. To whom did you apply? A. Bateman.

Q. Who? A. Bateman.

Trial Examiner Kennedy: A little louder, please.

Q. (By Mr. Persinger) Where? A. At the employment office in front of the Junction.

Q. What time of the day? A. It was in the morning; I would say about 10:00 o'clock.

Q. Was anyone else present in Mr. Bateman's office? A. No.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance of going back to work.

Q. What did Mr. Bateman say? A. He asked me first if I had been on the picket line, and I told him yes, and he said the company hadn't decided yet what they was going to do with us fellows.

Mr. Kitchel: I didn't hear the answer.

Trial Examiner Kennedy: Read the answer, please, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Q. (By Mr. Persinger) Was anything further said at that time? A. No.

Q. Did you apply after that? A. Yes.

Q. When? A. Between 10 days and two weeks later.

Q. And where did you apply at that time? A. At the employment office.

Q. To whom did you make application? A. Bateman.

Q. What time of day was it? A. I would say around 10:00 o'clock in the morning.

Q. Was anyone in Mr. Bateman's office at that time? A. No.

Q. What was said on that occasion? A. I asked him if there was any chance of going back to work, and he

said, "No," he couldn't send me over there; they would either beat me up over there, or they would come over and beat him up.

Q. Anything further said? A. Nothing at all.

Q. And have you applied since? A. No.

Mr. Persinger: I offer as Board's Exhibit 53 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 53.)

Cross examination:

Q. (By Mr. Kitchel) Mr. Peterson, are you an employee of the Phelps Dodge Corporation at the present time? A. No.

Mr. Persinger: Mr. Examiner, I have been called to the telephone. May we recess for a moment?

Trial Examiner Kennedy: Yes, we will have a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, I would like to withdraw the present witness and put on Mr. Malley.

Mr. Malley, will you take the stand, please.

(Witness temporarily excused.)

Trial Examiner Kennedy: There is no objection to that, is there?

Mr. Kitchel: No objection, Mr. Examiner.

James Malley—For National Labor Relations Board—Direct.

JAMES MALLEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: James Malley.

Direct examination:

Q. (By Mr. Persinger) Mr. Malley, what is your business or occupation? A. Deputy State Mining Inspector.

Q. Are you inspector for this district? A. Yes, sir.

Q. Can you tell us how many mines there are within a radius of about 30 miles of Bisbee that are operating at the present time? A. That is, with a large number of employees?

Q. No, just mines that are being operated. A. Well, in the district that I work in there are probably 14 producing mines.

Q. How large is that district? A. Sir?

Q. How large is your district? A. Well, that is Cochise County and part of Pinal and Pima and Santa Cruz.

Q. And they have about 14 mines operating? A. Yes, sir.

Q. Can you tell me if, during the past three years—that is, since the beginning of 1935,—there have been any other mines operating which are now shut down? A. Well, there are, on a small scale.

Q. What would you regard as a small scale? A. Well, working from 3 to 6 or 8 men.

Q. I see. Of the 14 mines which are operating at the present time, about how many would employ as many as 150 men or more? A. Out of the 14?

Q. Yes. A. Well, I would say all of the 14 employs more than that many men.

Q. And can you tell me approximately how many of those 14 mines would be located within about three miles of Bisbee? A. Well, it would be about 6 in this county that would take in a radius of about a hundred miles. This county is about a hundred miles square.

Q. And about 6 in the county? A. Yes.

Mr. Persinger: I think that is all.

Mr. Kitchel: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What are your duties as Deputy State Mine Inspector? A. Inspecting the mines in the vicinity and seeing that the laws are lived up to, especially the 8-hour law, and the safety and so forth.

Q. You are particularly concerned with safety conditions, is that right? A. Yes.

Q. And in the course of your duties do you inspect the Copper Queen mine of the Phelps Dodge Company? A. Yes, sir.

Q. How long have you been doing that? A. Since 1923.

Q. Do you also inspect the Shattuck Denn mine? A. Yes, sir.

Q. How long have you been doing that? A. How long?

Q. Yes. A. Since 1923.

Q. Can you give us a comparison of the safety conditions in the two mines? A. Well, up until about three months ago the Phelps Dodge was far superior to conditions in the Shattuck Denn, due to the fact that the Shattuck Denn has only one shaft and the ventilation had been very poor. We had been urging them at times to insist on better ventilation down there. We have taken the matter up with the Company quite a few times, even with some of the directors, regarding ventilation. They have been working underground down there from 200 to 230 men, and the

only ventilation they were getting was a little surplus of fresh air from the PD, and much of that air had been circulated through the PD mines before it got to the Shattuck Denn, and when they would go down in those mines we would find that the air wasn't so good. I know some of the places that we asked them regarding one shift, working one shift in them, and the management more or less complied with those requests.

And about two months ago, why, they put in a ventilation system down there that is pulling their own fresh air down their own shaft; that is, down two compartments, and the other two compartments—there are two outlets, which has taken care of the mine regarding ventilation just as good as the PD, that is, it will be within the next month.

Of course, you understand, when a mine is being opened up it takes time to put in doors, auxiliary doors, to get fresh air into some of the outlying places in the mine. At the present time, I would say the ventilation conditions at the Denn are just as good as the PD, and working conditions are just as good.

Q. Working conditions also? A. Sir?

Q. All of the safety conditions, all safety factors are as favorable at the Denn as they are at the PD at the present time? A. Yes.

Q. And how deep is the Denn mine? A. The Shattuck Denn is 2700 feet, but the lowest working place is 2560 feet.

Q. 2560 feet? A. Yes, sir. There is about 200 feet of shaft that they have not explored as yet.

Q. And there is still just one shaft that they work? A. Yes. Of course, the law provides for another exit, but they can go right out through the PD. They have done that on one or two occasions.

Q. They can do that? A. They can do that, yes.

Q. How many connections are there between the Denn and the PD? A. Well, there are at least three.

Q. Have you the record of accidents in the two different properties? A. Yes, sir.

Q. Do you have in mind what the record of accidents has been in the last 12 months in the two different properties? A. Well, I don't believe there would be much difference.

Q. You don't think there would be much difference? A. No. Of course, we could check them up and find out, but from a general viewpoint there is very little difference; that is, taking the number of men employed, and so forth.

Q. Have you ever worked as a miner? A. I certainly did.

Q. How many years? A. Well, I went to work in the coal mines when I was 12 years old and have been working in them more or less ever since.

Q. As a miner, though, and as an employee, how many years did you work? A. How many what?

Q. As an employee of a mine, how many years did you work? A. Well, I would say 30 years or more.

Q. Basing your answer on that experience, which mine would you rather work in, the P. D. or the Shattuck Denn? A. Well, I wouldn't have much preference. I think the P. D. is a little more active in safety campaigns and putting stuff like that over than the Shattuck Denn.

Q. In the course of your duties as an inspector, do you observe the different operations that the men go through in these two different mines? A. Yes, sir.

Q. Is there any difference in the type of work that a mucker has to do in the P. D. Mine than in the Shattuck Denn Mine? A. Well, there isn't much difference. Both mines are pretty near a hundred per cent mechanical mucking.

Q. How about the operations of a man who is classified as a miner? Are they any different in the two mines? A. I don't think there is much difference.

Trial Examiner Kennedy: Any further questions?

Mr. Persinger: I have nothing further.

Mr. Kitchel: Nothing further.

Mr. Persinger: Thank you, Mr. Malley.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Peterson, will you resume the stand?

FRANK PETERSON, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Trial Examiner Kennedy: Cross examination.

Cross examination:

Q. (By Mr. Kitchel) Mr. Peterson, have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. What shaft were you working at the time that you walked out on June 10, 1935? A. Campbell.

Q. Were you in the picket line every day? A. No.

Q. Approximately how many days were you in the picket line during the period that the picket line was established? A. I would say I was in the line better than half the time during the whole strike.

Q. Were you in the picket line right up to the last week during the time within which the picket line was in action? A. Within two weeks, I would say.

Q. You were not there the last two weeks? A. No, I wasn't.

Q. Did you leave the district at that time? A. No. I was in the district. I was out at the mountains—the Huachuca Mountains.

Frank Peterson—For National Labor Relations Board—Recalled—Cross.

Q. Is that your home? A. That is where I am living now, yes.

Q. Were you working out there? A. No.

Q. Were you on relief at any time during the course of the time that the picket line was in action? A. Yes, sir.

Q. How long did you continue on relief? A. Up until—from the strike until October of '35.

Q. October of 1935? A. Yes, sir.

Q. And then did you obtain employment? A. Construction, yes, for Pleasant & Hasler.

Q. For Pleasant & Hasler Construction Company? A. Yes, sir.

Q. On the Fort Huachuca Road? A. Yes, sir.

Q. How long did you work for them, Mr. Peterson? A. Until the latter part of March, '35—'36.

Q. From October, '35, until the latter part of March, 1936? A. Yes.

Q. What was your rate of pay when working for that company? A. Fifty cents an hour; eight hours a day.

Q. Eight hours a day? A. Yes.

Q. Did you have continuous employment with them during that period? A. No, I don't recall; but we didn't get full time. They never let us make full time.

Q. What was full time? A. That would be six days a week.

Q. Eight hours a day? A. Yes.

Q. Well, how much would you say that you averaged a week during that period of time? A. About $16, I imagine.

Q. $16 a week? A. Yes, as well as I remember.

Q. Were you working less than 40 hours a week? A. When we worked we worked the 40 hours, and then we had to lay off—lose time.

Q. In March of 1936 were you laid off that job? A. Yes.

Frank Peterson—For National Labor Relations Board—Recalled—Cross.

Q. What was your next employment after that, Mr. Peterson? A. For John Steffes, contractor, Rancho Sacatal.

Q. Where is that? A. Between here and Douglas.

Q. What job was that contractor on? A. Well, building. He was building that ranch out there.

Q. What kind of a job did you have with him? A. Laborer.

Q. Did you get that job right after you quit the Pleasant & Hasler job? A. No. It was the latter part of April or the first of May when I went to work there.

Q. How long were you on that job? A. Until the middle of July.

Q. From the latter part of April, 1936? A. Yes, sir.

Q. To the middle of July, 1936? A. Yes, sir.

Q. What was your rate of pay on that job? A. $4 a day.

Q. $4 a day? A. Yes, sir.

Q. How many days a week? A. Six days a week.

Q. And then was that job finished in July of 1936? A. July, yes.

Q. What was your next employment, Mr. Peterson? A. At the Border Ranch at Hereford.

Q. When did you go to work there? A. September, '36.

Q. What kind of a job did you get there? A. Laborer.

Q. How long did you work for the ranch? A. Steady until March.

Q. March of 1937? A. 1937, yes.

Q. How did you happen to quit that job? A. The work finished up.

Q. What was your rate of pay with the Border Ranch, Mr. Peterson? A. Fifty cents an hour.

Q. Eight hours a day? A. Eight hours a day, yes.

Q. $4 a day? A. Yes.

Q. How many days a week? A. Six days a week.

Frank Peterson—For National Labor Relations Board—Recalled—Cross.

Q. Did you, in addition, receive your board and lodging? A. No.

Q. Where did you live during the course of time you were working for them? A. I lived above the Border Ranch, Galeski's Place.

Q. So there was nothing in addition to the $4 a day paid to you by the Border Ranch? A. Not a thing.

Q. Then in March of 1937, when you quit the Border Ranch, what was your next employment? A. Well, I stayed around there and worked off and on for the Border Ranch, whenever they happened to need me.

Q. Over what period of time? A. Until August.

Q. And then did you obtain another job? A. I worked one month on the W. P. A. at Fort Huachuca.

Q. That is, the month of August? A. Yes, sir; August. It was in August when I started, and I finished up in September.

Q. Then what did you do? A. I went to work for John Steffes, in Lowell.

Q. What job did you have with Mr. Steffes? A. Laborer.

Q. At what rate of pay? A. $4.50 a day, 8 hours.

Q. $4.50 a day. And how many days a week? A. 6.

Q. How long did you continue at that job? A. Let's see. When did I finish that? About the last of November, when we finished that.

Q. And why did you leave that job? A. Laid off, work finished.

Q. Have you been employed since that time? A. The 20th of December I went to work for the Lanteen Medical Association.

Q. The 20th of December? A. Yes, sir.

Q. What is your job with that Association? A. Laborer.

Q. Whereabouts do you work? A. Fort Huachuca, Huachuca Mountains.

Frank Peterson—For National Labor Relations Board—Recalled—Cross.

Q. How much do you get paid—— Are you working with them at the present time? A. Yes; $4.00 a day.

Q. $4 a day? A. Yes.

Q. How many days a week? A. Six. That isn't steady. It is off and on. We lose quite a lot of time.

Q. Well, will you average—or, have you, since December 20th, averaged five days a week? A. I would say four days a week since December 20th.

Q. What is the nature of the work they are doing out there in the Huachucas? A. Building, construction.

Q. And that is your present employment, Mr. Peterson? A. Yes.

Q. Have you at any time during this period that we have been discussing, from June 10, 1935, to date, made application for employment at the Shattuck Denn Mining Company? A. Yes, I rustled there twice.

Q. When was that? A. Along through the summer; I would say about along in May.

Q. In 1937? A. Of 1937, and then later.

Q. Were they hiring at that time? A. Very few men.

Q. Were you ever hired and rejected by them? A. No.

Q. By the physician? A. No.

Q. Did you make any application for employment with the Shattuck Denn in 1936? A. No.

Q. Then, it was just the two times in May of 1937—— A. (Interrupting) May, and again in August.

Q. August of 1937? A. 1937, yes.

Q. Have you ever, since approximately the middle of September, 1935, made application for employment with the Phelps Dodge Corporation? A. No.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

BALANCE OF RECORD

WILL BE FOUND IN VOL. II

(Vol. II—Pages 465-923, Inclusive)

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

No. 641

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

PHELPS DODGE CORPORATION.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED {AUGUST 30, 1940.
{DECEMBER 21, 1940.

CERTIORARI GRANTED JANUARY 13, 1941.

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1-b	Charge sworn to May 25, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	4
1-c	Page 2 of Amended Charge sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	6
1-d	Page 1 of Amended Charge sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	8
1-d(2)	Affidavit by Rose E. Lombardo, sworn to January 5, 1938, of service of subpoena duces tecum on Mr. H. C. Henrie by registered mail	47	*
1-e	Complaint and Notice of Hearing issued by the Board, dated January 10, 1938	47	10
	Appendix "A" attached to complaint—list of individuals whom, it is alleged in the complaint, Phelps Dodge Corporation, the respondent Corporation (petitioner herein), has refused to reinstate	47	27
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1-g	Order by Towne Nylander, Regional Director of the Board, 21st Region, dated January 19, 1938, extending the respondent Corporation's time to answer	47	*

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

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1-h	AFFIDAVIT by Lucile R. Chinnici, sworn to January 11, 1938, of service of complaint, amended charge, notice of hearing and Rules and Regulations by registered mail on International Union of Mine, Mill and Smelter Workers, Local No. 30, on the Copper Queen Branch and the New York office of the respondent Corporation, on the Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, and on Denison Kitchel	47	*
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2	Copy of ANALYSIS OF STRIKES in February, 1937, prepared by Division of Industrial Relations of the United States Department of Labor	48	*
3	Copy of various parts of REGISTRATION STATEMENT filed by the respondent Corporation with the Securities and Exchange Commission on May 11, 1937, and various parts of amendment thereto filed on May 25, 1937	51	*
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Exhibit No.		Admitted at Page	Printed at Page
6	Copy of ANNUAL REPORT of the respondent Corporation for 1935	82	*
7	Copy of ANNUAL REPORT of the respondent Corporation for 1936	82	*
8	SERVICE RECORD CARD of Tom Abedin	90	621**
10	SERVICE RECORD CARD of William Day	140	621**
11	LIST of names and dates with respect to persons employed or re-employed by the respondent Corporation since June 10, 1935 (offered for identification only, and returned to counsel for the Board)	147	*
12	Copy of BLANK FORM entitled "Phelps Dodge Corporation, Copper Queen Branch, Statement of Time"	152	*
13	SERVICE RECORD CARD of Levie Crandal	161	622**
14	SERVICE RECORD CARD of Edgar L. Hargus	166	622**
15	SERVICE RECORD CARD of John Henry Key	177	623**
16	SERVICE RECORD CARD of George Edward Frazee	200	623**
17	SERVICE RECORD CARD of John Foley	208	624**
18	SERVICE RECORD CARD of Edward J. Bowden, Jr.	214	624**
19	SERVICE RECORD CARD of Paul Amaro	219	625**
20	SERVICE RECORD CARD of Wilford David Mortenson	229	625**
21	SERVICE RECORD CARD of Anson Perry Windsor	237	626**
22	SERVICE RECORD CARD of E. A. Curtis	244	626**
23	SERVICE RECORD CARD of William Dougherty	250	627**
24	LETTER dated February 10, 1934, from M. A. Bateman, Employment Agent of the respondent Corporation, to Mr. Tom Abedin	254	628

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
25	SERVICE RECORD CARD of Grover Dee Windsor ...	266	628**
26	SERVICE RECORD CARD of Joe Dunkerson	273	629**
27	SERVICE RECORD CARD of Vernon Curtis	281	630**
28	SERVICE RECORD CARD of Grover Cornett	287	630**
29	SERVICE RECORD CARD of Martin Vaclav	291	631**
30	SERVICE RECORD CARD of Montague L. Reed	299	631**
31	SERVICE RECORD CARD of Clyde Bigelow	305	632**
32	SERVICE RECORD CARD of Milton Lewis Wynn	315	632**
33	SERVICE RECORD CARD of Alek Kalastro	321	633**
34	SERVICE RECORD CARD of William Henry Bigelow	328	633**
35	SERVICE RECORD CARD of William Hiriam Windsor	334	634**
36	SERVICE RECORD CARD of Ellis Marion Scales	338	634**
37	SERVICE RECORD CARD of Frank Harold Erkkila ..	344	635**
38	SERVICE RECORD CARD of Luke Sertick	350	635**
39	SERVICE RECORD CARD of Merrell Ernest Johnson .	359	636**
40	SERVICE RECORD CARD of George Gerhardt	364	636**
41	SERVICE RECORD CARD of William D. Graham	368	637**
42	SERVICE RECORD CARD of William Edward Sharp, Jr.	377	637**
43	SERVICE RECORD CARD of Lester F. Bethel	390	638**
44	SERVICE RECORD CARD of Mike Mihelich	396	638**
45	SERVICE RECORD CARD of Pete D. Caretto	400	639**
46	SERVICE RECORD CARD of Henry Clyde Waters ..	407	639**
47	SERVICE RECORD CARD of Philities C. Lytle	413	640**
48	SERVICE RECORD CARD of Jesse Edge	421	640**
49	SERVICE RECORD CARD of H. J. Montgomery	426	641**
51	SERVICE RECORD CARD of J. M. Morris	436	641**
52	SERVICE RECORD CARD of Leonard Guess	440	642**

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits.

Exhibit No.		Admitted at Page	Printed at Page
53	SERVICE RECORD CARD of Frank Peterson	455	642**
54	SERVICE RECORD CARD of Harvey Dolph Edge ...	466	643**
55	SERVICE RECORD CARD of Ben Harrison Stringer .	473	643**
56	SERVICE RECORD CARD of George C. Rohrer	479	644**
57	Copy of LETTER dated June 10, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates, President of the respondent Corporation	595	645
58	Copy of TELEGRAM dated June 10, 1935, from P. G. Beckett to L. S. Cates, President of the respondent Corporation	597	647
59	Copy of LETTER dated August 6, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates	598	648
60	Copy of LETTER dated August 13, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated August 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein.....	599	649
61	Copy of LETTER dated August 27, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated August 24, 1935, from H. C. Henrie, Assistant General Superintendent of the respondent Corporation, to Mr. P. G. Beckett enclosed therein	600	656
	Copy of postscript to enclosed letter.....	600	659
62	Copy of LETTER dated July 14, 1937, from the General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated July 17, 1937, from the General Manager to Mr. L. S. Cates	660	660

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
63	Copy of LETTER dated June 25, 1935, from the Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation	602	662
64	Copy of LETTER dated June 11, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated June 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein	602	665
65	Copies of two TELEGRAMS both dated August 25, 1935, one from P. G. Beckett to L. S. Cates, President of the respondent Corporation, and one from J. H. Davis to P. G. Beckett	603	669
66	Copy of LETTER dated June 5, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation	603	670
67	Copy of LETTER dated June 15, 1937, from the General Manager of the respondent Corporation to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated June 11, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation enclosed therein	604	672

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H. D. Edge—For National Labor Relations Board—Direct.

H. D. Edge, called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: H. D. Edge.

Trial Examiner Kennedy: What is your name, please?

The Witness: H. D. Edge.

Direct examination:

Q. (By Mr. Persinger) Mr. Edge, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. In January, 1924.

Q. And how long did you work after that? A. I worked until June, 1935.

Q. You had no layoffs during that time? A. No—well, I was off on one 30-day vacation, but I wasn't laid off.

Q. What job did you have when you started? A. I was mucker when I started.

Q. And what job did you have in June, 1935? A. Miner.

Q. At $5.00 a day? A. Yes.

Q. At that time, in June, 1935, were you a member of the Union? A. I was.

Q. Did you go out on strike with the Union? A. I did.

Q. Were you on the picket line? A. Yes.

Q. After the strike was over, did you apply for reinstatement with the company? A. Not until last year, October of last year.

Q. October of 1937? A. 1937.

Q. Why did you wait so long to apply? A. Well, I figured there wasn't any use to apply. There had been several applied, and they hadn't gotten on.

Q. Do you have a brother who went out on strike? A. Yes, sir.

Q. Who was that? A. Jesse Edge.

Q. Do you know that he applied? A. No, sir; I don't.

Q. But a number of your friends have? A. A number of them, yes.

Q. Who were on the picket line with you? A. Yes.

Q. Have you applied since October of 1937? A. No, I haven't.

Q. To whom did you apply on October, 1937? A. Joe Berlindis.

Q. Where did you see him? A. In the office, the employment office.

Q. What time of day was it? A. It must have been around 9:00 o'clock.

Q. In the morning? A. In the morning.

Q. And did you see him in his private office? A. Yes, sir.

Q. Was anyone else present? A. Not right in the office; there was some out in the outer office.

Q. What was said on that occasion? A. Well, I went in and asked him what was the chance for a miner to go to work, and he asked me if I had ever worked for the company before, and I told him I had, and he asked me when, and I told him, and he told me then that he wasn't employing anyone at that time.

Mr. Persinger: I offer in evidence as Board's Exhibit 54, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 54.)

Mr. Persinger: The witness with you.

H. D. Edge—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Kitchel) Where do you live, Mr. Edge? A. At the present time, I live between Coolidge and Florence.

Q. Is that called the Casa Grande district? A. Yes, it is called the Casa Grande.

Q. Are you engaged in farming up there? A. Well, I am working on a W. P. A. project at the present time.

Q. Do you have property of your own up there? A. No.

Q. How long have you been there? A. I moved up there just before Christmas.

Q. Just before Christmas of last year? A. Of last year, yes.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. And you say that you are working on the W. P. A. at the present time in the Florence-Coolidge district? A. At the present time, yes, in Pinal County.

Q. How often were you in the picket line during the course of time that the picket line was established? A. Oh, I wasn't there all the time, but I was there some of the time.

Q. When was the last day that you were in the picket line? A. I don't just remember the last day that I was there. I was working on W. P. A. and I don't just remember. When I was working I couldn't get in the picket line.

Q. And how long did you continue on relief work after the picket line quit? A. Well, it was—I believe in April that I got a job with the Tempe Stone Company. I am not sure about that.

Q. About April, 1936? A. About April, to the best of my remembrance, it was in April.

Q. And that was the Phoenix-Tempe Stone Company? A. Yes.

Q. How long did you work for them? A. About five weeks, I believe.

Q. What was your rate of pay with them, Mr. Edge? A. Fifty cents an hour.

Q. How many hours a day? A. We was only allowed 40 hours a week.

Q. Forty hours a week? A. Yes.

Q. You say you worked for them for five weeks? A. About five weeks, I think.

Q. What was your next job after that? A. Well, the next job that I had after that was in Climax, Colorado.

Q. When did you go to Climax, Colorado? A. It was in June of 1936.

Q. Did you have any employment between the time you left the Phoenix-Tempe Stone Company and the time you got to Climax? A. Nothing, only I worked probably one period on W. P. A. here on relief.

Q. For whom did you go to work at Climax, Colorado? A. The Molybdenum Mining Company.

Q. Did you go to work as a miner? A. Yes.

Q. What was your rate of pay when you started with them? A. $5.

Q. How many days a week? A. Six days.

Q. How long did you work for that company? A. Eleven shifts.

Q. Eleven shifts? A. Yes.

Q. Were you laid off at the end of that time? A. I quit.

Q. Where did you go from there? A. I went from there into Idaho.

Q. Whereabouts in Idaho? A. At Wallace.

Q. Did you go to work for the Sunshine Mining Company? A. No. I got a job and got turned down on doctor's examination.

Q. By the Sunshine Mining Company? A. Yes.

Q. Was any reason given by the company for the fact that you were rejected by the doctor? A. Said I had too much dust on my lungs.

Q. Is that what they call 'silicosis''? A. Yes.

Trial Examiner Kennedy: Speak out, please. The answer has to go in the record.

The Witness: Yes.

Q. (By Mr. Kitchel) That would be some time in June of 1936? A. No, that was in July, 1936.

Q. Then what did you do, Mr. Edge? A. I come back here.

Q. And you got back here in July or August of 1936? A. In August, I believe it was.

Q. Did you obtain a job when you returned? A. Well, I went back on W. P. A. when I first come back here.

Q. How long did you stay on W. P. A. when you returned? A. I stayed on W. P. A. until October 16th, I believe it was.

Q. October what? A. October, '36.

Q. And then did you obtain a job? A. I did.

Q. With whom? A. Joe Colford, leaser over here.

Q. What lease is Joe Colford operating? A. The "Uncle Sam", I believe it is called.

Q. And that was in October, 1936? A. Yes.

Q. How long did you work for him? A. I worked until 28th of April, 1937, and got hurt.

Q. What were you employed as at the Colford, a miner? A. A miner.

Q. What was your pay? A. At the time that I were hurt it was six—I don't remember just what it was, but it was around $6; maybe a little more, or maybe a little bit under that.

Q. How many days a week? A. We was working six days.

Q. When you first started with Mr. Colford do you remember what your rate was? A. $5, I believe, when I first started.

Q. Were you working six days a week at the time you started? A. Yes, sir.

Q. Were you employed continuously by Mr. Colford from October, 1936, until April, 1937? A. Yes, sir.

Q. And then I believe you stated that you were injured. How long did you lay off? A. I was off until the 1st of September, 1937.

Q. Did you receive compensation during that period? A. I did.

Q. You then returned to work for Mr. Colford? A. Yes, sir.

Q. Are you working for him at the present time? A. No, sir; I only worked four shifts.

Q. You worked four shifts when you went back in September of 1937? A. Yes, sir.

Q. Were you laid off at that time? A. Yes, sir.

Q. Did you obtain a job after that? A. No, nothing, only with W. P. A.

Q. You have been on nothing but W. P. A. work since that time? A. Since that time.

Q. Have you at any time made application to the Shattuck Denn for employment? A. I did.

Q. Were you able to obtain employment? A. No.

Q. What was the reason? A. Well, I don't know. He just didn't give me a job.

Q. Were you ever examined by the Shattuck Denn doctor? A. No, sir.

Q. Where is your family now, Mr. Edge? A. They are out at Coolidge—between Coolidge and Florence.

Q. They are all living up there with you? A. Yes.

Q. When did you get back to the district? A. Last night.

Mr. Kitchel: I believe that is all, Mr. Examiner.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I have nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What job did you hold at Phelps Dodge when you went on strike? A. Miner.

Q. Do you want that job back? A. Well, I would like to have it back, yes.

Q. Do you feel that your physical condition is such that you could do the work? A. I do.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Stringer.

BEN H. STRINGER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Stringer, Ben H.

Direct examination:

Q. (By Mr. Persinger) Mr. Stringer, were you formerly employed at the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed there? A. In '35, '34 and '35; part of '34 and part of '35.

Q. When did you leave your employment there? A. I think it was on the 10th of June, the best I can remember.

Q. That was at the time of the strike? A. Yes, sir.

Q. How long had you been continuously employed by Phelps Dodge before the strike? A. One year.

Q. One year? A. Yes.

Q. What job did you start in at? A. Mucker.

Q. What job did you have just before the strike? A. I was mucking, with miner's pay.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you a member of the Union at the time of the strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. Did you apply for reinstatement at any time while you were on the picket line? A. No, sir; I didn't.

Q. After the strike was over did you apply for reinstatement? A. Yes, sir.

Q. When? A. It was right at the last of August, or—between the last of August and the first of September—I mean, the 15th of September.

Q. That was in 1935? A. 1935.

Q. To whom did you apply? A. Bateman.

Q. Where? A. At the employment office.

Q. What time of day was it? A. The best I can remember, it was along about 9:00 or 10:00 o'clock.

Q. In the morning? A. In the morning.

Q. Did you go into Mr. Bateman's private office? A. Yes.

Q. Was anyone else in there? A. Not that I can recall.

Q. What did you say to Mr. Bateman? A. I asked him if I could—if there was any chance of us going back to work, for me to get another job, and he says, "No". He says, "No chance".

Q. Anything else said? A. And then he made the statement, he says, "Unless you get right with the church—with your church," he said.

Q. "Unless you get right with your church"? A. "With your church," yes.

Q. Have you applied at any time since then? A. Yes.

Q. When? A. In this last month; I don't remember the date.

Q. Last month? A. This last month.

Q. January? A. Well, no; it was in December.

Q. In December? A. Yes, December.

Q. Of 1937? A. 1937.

Q. And to whom did you apply? A. I don't know what the employment agent's name is there now.

Q. Was it Mr. Berlindas? A. Who?

Q. Berlindas? A. I don't know whether that is his name or not.

Q. Did you apply at the employment office of the company? A. Yes, sir.

Q. About what time of day was that? A. About 8:30.

Q. Was there anyone there except you and the employment manager? A. Not that I remember.

Q. And what was said on that occasion? A. He says, "Well," he says, "I am sorry; I can't do anything for you," but he says, "We are laying off a bunch of men," and he says, "Maybe after the first of the year we might do something; I don't know."

Q. Anything else said? A. That is all that was said.

Mr. Persinger: I offer as Board's Exhibit 55, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 55.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Didn't Mr. Berlindas tell you, that is, the employment agent, whoever he was, in December, 1937, Mr. Stringer, that he was not hiring anybody? A. Well, that is what he said, he wasn't hiring nobody now, and they was laying off a bunch of men, and for me to come back after the first of the year, and he says, "Maybe there'll be something; I don't know."

Q. Have you been back? A. No, I haven't been back.

Q. Where did you live during the strike? A. I lived in Warren part of the time, at Peterson's place, Peterson's house up in Warren.

Q. Where did you live the rest of the time? A. The rest of the time I lived down here on the Cochise Road, Maxwell Hill.

Q. Were you in the picket line every day? A. No, not every day.

Q. Were you on relief during the time the picket line was established? A. Part of the time I was, yes. I was on relief practically all the time then after we came out on strike.

Q. What was the last day that you were in the picket line that you remember? A. Along about the 22nd.

Q. What month? A. August.

Q. August, 1935? A. Yes.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. No, I am not.

Q. How long did you stay on relief work after you walked out on June 10, 1935? A. I am still on it.

Q. You have been on relief ever since? A. Practically ever since. I worked 18 days at the Denn, and outside of that I have been on relief ever since.

Q. When did you go to work for the Shattuck Denn Mining Company? A. I don't remember the date.

Q. What year? A. '35—'36; it was in '36.

Q. What time of the year? A. It was along—I don't know what date it was.

Q. Well, was it the latter part of the year or the first part of the year? A. It was in the fore part of the year.

Q. What? A. It was in the fore part of the year, along about the middle; I think it was along through April or May, somewheres along in there.

Ben H. Stringer—For National Labor Relations Board—Cross.

Q. In the spring of 1936 you went to work for the Shattuck Denn? A. I think that is when it was.

Q. And how long did you say you worked for them? A. 18 days.

Q. What job did you have with the Shattuck Denn? A. Mucking.

Q. At what rate of pay? A. Miner's.

Q. And what was that rate at that time? A. I don't remember.

Q. Was it in excess of $5.00 a day? A. Yes, it was $5.00 or better.

Q. How much better? A. Well, I don't know how much better. I do know it was $5.00 and a little over; I don't remember the exact amount.

Q. Why did you quit that job? A. By request of the boss.

Q. You mean you were discharged? A. I was discharged.

Q. Did he request you to leave, or did he fire you? A. He fired me, and went up with me to be sure that I got on top.

Q. That is the only job you have had? A. That is the only one I have had.

Q. During this period? A. Yes, sir.

Q. Have you left the district at any time to seek employment? A. No, sir.

Q. At any of these other mines? A. No, sir.

Q. I didn't get your answer back there. What was the reason for your discharge? A. The reason for my discharge was because I pulled the air plug out of the air hose to get more air, and he come through and give me my choice. I could either put it in or go on top, and I just politely and firmly released the thing and asked him, I said, "Now, listen, let's have a little reasoning about this. I can't stay

here and work in this place without a little air, and I've got to have it or I can's stay here," and he says, "You can either put it in or go on top." I said, "You can do what you want. I can stay here and work with the plug out, or you can send me on top. I won't go on top of my own free will."

Q. Was anybody working with you at that time? A. I don't know what the mucker's name was that was with me.

Q. Did he get discharged? A. No. He came out to the station with me, but they sent him back.

Q. Have you ever been back to apply for employment at the Shattuck Denn? A. Yes, sir.

Q. When was that? A. Well, I went back last year. I don't know what time of the year it was. I went back there several trips and tried to get back on, but I never did make the riffle.

Q. Just once in 1937 you went back? A. No, I went back several different times. I don't know how many times, six or eight times.

Q. And each time did you see the employment agent? A. Well, if he was there, I seen him. I seen him, of course, several times. Sometimes he wasn't there.

Q. Did he tell you why he wouldn't hire you? A. No, he never did tell me why.

Q. Are you on relief at the present time? A. Yes, sir. W. P. A.

Q. In what shaft were you working at the time you walked out on June 10, 1935? A. C. & A.

Q. The Campbell shaft? A. C. & A., Junction shaft.

Q. Junction shaft? A. Yes, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I have one or two questions.

Ben H. Stringer—For National Labor Relations Board—Redirect.

Redirect examination:

Q. (By Mr. Persinger) I will show the witness a piece of metal and ask him what it is. A. That is the plug, one of the plugs that was taken out of the hose, the one I taken out.

Mr. Persinger: I merely want it to be noted that the plug itself is about three-quarters of an inch in diameter, and that the hole in the plug is about 1/16th of an inch in diameter, so it would make considerable difference whether the plug was in or out.

Mr. Kitchel: Are you offering that in evidence?

Mr. Persinger: I can't very well offer it in evidence. I am merely reading into the record the description of the plug.

Mr. Kitchel: I move that that be striken from the record. I can't see what that has to do with this case.

Trial Examiner Kennedy: It may go out. Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want your old job back at Phelps Dodge? A. Why, yes, I would take it back if I could get it.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Rohrer.

George C. Rohrer—For National Labor Relations Board—Direct.

GEORGE C. ROHRER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: George C. Rohrer.

Direct examination:

Q. (By Mr. Persinger) Mr. Rohrer, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When did you start work there? A. I started for the C. & A. in 1928, and remained through the merger.

Q. How long did you continue to work for Phelps Dodge? A. June 10th.

Q. What year? A. '35.

Q. What was your job when you started? A. Mucker.

Q. What was your job in June, '35? A. Motorman.

Q. Motorman? A. Yes, sir.

Q. At what rate of pay? A. $5.24, I believe.

Q. In June, 1935, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over did you apply for reinstatement? A. Yes.

Q. When? A. About two weeks after the strike, I should say.

Q. To whom did you apply? A. Mr. Bateman.

Q. What time of day was it? A. About 9:00 o'clock in the morning.

Q. Where was it? A. At Mr. Bateman's office.

Q. Was anyone else in his office? A. I seen no one but Mr. Bateman.

Q. What did you say to Mr. Bateman? A. I asked him how about a job.

Q. What did he say? A. He said, "No, I can't give you a job."

Q. Was anything else said? A. No, sir.

Mr. Persinger: I will offer in evidence as Board's Exhibit No. 56 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 56.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Are you employed at the present time, Mr. Rohrer? A. On the W. P. A.

Q. Where do you live at the present time? A. In Sulphur Springs Valley.

Q. You are working in the Valley on W. P. A. work? A. No, in Warren.

Q. Since the time which you have referred on your direct examination as two weeks after the end of the strike, have you ever made application for employment with the Phelps Dodge Corporation? A. No, sir.

Q. Were you on relief all during the time that the picket line was established? A. Yes, sir.

Q. How long did you continue on relief at that time? A. Until the W. P. A. started.

Q. Well, that was relief work, too, was it not? A. Yes, sir.

Q. Did you obtain any employment other than relief work during the year 1935? A. No, sir, unless it was just

a job for a day or two now, and probably three or four days a month; something like that.

Q. What kind of jobs? A. Farm work.

Q. Farm work? A. Yes, sir.

Q. In Sulphur Springs Valley? A. Yes, sir.

Q. In 1936 did you obtain any employment? A. Only just a day now and then.

Q. And the rest of the time you were on relief? A. Yes, sir.

Q. The same is true of 1937? A. Yes, sir.

Q. Did you ever make application for employment with the Shattuck Denn Mining Company? A. I never did.

Q. Were you anxious to work in the mining game again? A. Yes, I would like to have a job at mining.

Q. Didn't you know that a lot of your associates here had gone to work at the Shattuck Denn? A. Yes, sir.

Q. How did it happen that you did not make an application there? A. Well, they had to rustle so long, for one thing, and I was up there several times, but none of them got jobs.

Q. None of them got jobs? A. While I were there; no, sir.

Q. How often were you there? A. Possibly three times.

Q. In the rustling line? A. Yes, sir.

Q. But you know, as a matter of fact, that a great many of them did get employment, do you not? A. Yes, sir.

Q. Do you own property in the Sulphur Springs Valley? A. Yes, sir.

Q. What is the nature of that property? A. Five acres of ground and a house.

Q. Did you do any farming on it, or do you do any farming on it? A. No, sir.

Q. Have you ever sought employment at any of the other mines around this part of the country? A. No, sir.

Q. You have not really made any great effort to get work, have you? A. Outside of the Phelps Dodge, no.

Q. And that was in 1935, probably in September? A. Yes, sir.

Q. Are you satisfied with relief work? A. No, sir.

Q. Why haven't you applied for employment? A. Well, I never thought there was any chance to get it.

Q. You knew there was a chance to get it at Shattuck Denn, did you not? A. No, sir.

Q. Yet you knew all these men had gone to work there? A. Some of them.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Have you ever been in the Shattuck Denn Mine? A. No, sir; I never was.

Q. Do you know what the conditions are there by reputation? A. I have heard that they was awfully hot.

Q. Did that have anything to do with your wanting to go to work there? A. No.

Q. Do you want your old job back at Phelps Dodge? A. Yes, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: If the Examiner please, the Board moves to dismiss the complaint as to Bert Bethel, T. N. Curtis and McKelvey.

Trial Examiner Kennedy: What was the first name, please?

Mr. Persinger: Bert Bethel.

Trial Examiner Kennedy: How do you spell it?

Mr. Persinger: B-e-t-h-e-l.

Trial Examiner Kennedy: B-e-t-h-e-l. He has testified, has he not?

Mr. Persinger: He was not on the stand.

Trial Examiner Kennedy: He was not on the stand. The second one?

Mr. Persinger: T. N. Curtis. He also was not on the stand.

Trial Examiner Kennedy: T. N. Curtis.

Mr. Persinger: And McKelvey.

Trial Examiner Kennedy: McKelvey.

Mr. Persinger: He was not on the stand.

Mr. Kitchel: Counsel, may I ask you a question at this time?

Mr. Persinger: Yes.

Mr. Kitchel: Have you determined who McKelvey is?

Mr. Persinger: I have not. That is one reason I am dismissing as to him. I understand that he is not in this part of the country, and I still do not know which one he is.

Mr. Kitchel: Okay.

Trial Examiner Kennedy: The motion is granted. The complaint will be dismissed as to Bert Bethel, T. N. Curtis and McKelvey.

Mr. Persinger: At this time, Mr. Examiner, rather than offer this entire list of names as an exhibit, this list which has been marked for identification as Exhibit No. 11, I should like to read into the record the summary appearing upon the face of the contents of the exhibit. This material was compiled by respondent in answer to the subpoena.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: Yes, there is objection. Has the Trial Examiner seen the document?

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Kennedy: As I understand it, this has not been received in evidence?

Mr. Persinger: No, it has been marked for identification.

Trial Examiner Kennedy: You wish to offer in evidence merely the first page of the exhibit?

Mr. Persinger: That summary.

Trial Examiner Kennedy: The summary.

Mr. Persinger: The summary of the contents.

Trial Examiner Kennedy: Is there any point made, counsel for the respondent, that the summary does not truly reflect the balance of the document?

Mr. Kitchel: No, there is no objection on that ground. May I state my objection, please?

Trial Examiner Kennedy: Yes, surely.

Mr. Kitchel: We object to the introduction of that first page of that document, or any part of it, upon the ground that it is irrelevant and immaterial to the issues of this case. As I recall it, it states the number of men hired since June 10, 1935, and it also classifies certain of them as to what time they were previously employed by the respondent. There is no evidence in the record in the Board's case as to the number of men who went out on strike. There is evidence in the record, as I recall it, from the Witness Bateman that some of the men who went out on strike have been reemployed, and I cannot see that this has any bearing on the issue before the Board at this time.

Trial Examiner Kennedy: Have you anything to say?

Mr. Persinger: If the Examiner please, there is at least evidence that some 40-odd witnesses went out on strike. They have testified. It may be necessary, if the Board should decide that any of the complainants should be reinstated, or that all of

them should, to show over how many employees they are entitled to preference, and also for the purpose of clarifying the record on how many persons were employed for the purpose of replacing strikers.

Mr. Kitchel: There can be no question from the testimony that has been put on by the Board that whatever number of witnesses there have been for the Board, that there are some 40-odd who walked out on June 10, 1935. There is no way of disputing that.

The question of whether or not they should be reinstated, and if they are to be reinstated, the amount of pay, if any, they should receive, and the question of seniority and replacement of other men, as I understand it, the procedure of the Board is to determine at the time that the order is carried into effect.

Trial Examiner Kennedy: I believe that the material contained in this proposed exhibit might properly be introduced in rebuttal to some defense that the respondent might offer. That is a possibility. I will withhold ruling on the offer until the completion of the respondent's case.

Mr. Persinger: I now move to conform the pleadings to the proof in the following particulars:

The name of "William Daugherty," as appearing in the complaint, should be changed so that the spelling of his last name is "D-o-u-g-h-"—not "D-a-u-g-h-"

Similarly, the name of "Mike Mikelich" appears in the complaint and charge, which should be "Mike Mihelich, M-i-h-e-l-i-c-h," the difference between a "k" and an "h."

Trial Examiner Kennedy: Will you spell that the way it should be?

Mr. Persinger: It should be "M-i-h-e-l-i-c-h."

The name "Edgar L. Hargus" appearing in the charge and complaint should read "Edgar Lewis Hargus, L-e-w-i-s."

The name "John H. Key" should read "John Henry Key".

The name "John Foley" should read "John Patrick Foley".

The name "Edward J. Bowden, Jr.," should read "Edward Bowden".

The name "W. D. Mortenson" should read "Wilford Davis Mortenson".

The name "A. T. Windsor" should read "Anson Perry Windsor".

The name "E. A. Curtis" should read "Emory Adelbert Curtis".

The name "Grover Windsor" should read "Grover D. Windsor".

The name "Joe Dunkerson" should read "Joe Henry Dunkerson".

The name "Vernon Curtis" should read "Vernon Dell Curtis".

The name "Alek Kalastro" should read "Alexander Kalastro".

The name "E. M. Scales" should read "Ellis Meran Scales".

The name "Merrell Johnson" should read "Merrell Earnest Johnson".

The name "William E. Sharpe" should read, "William Edward Sharpe," and the "Sharp" should have no "e" on the end.

The name "P. C. 'Dave' Lytle" should read merely "P. C. Lytle".

And the name "H. J. Montgomery" should read "Herschel J. Montgomery".

I believe that that corrects the spelling of all the names.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: The motion is granted.

Mr. Persinger: The Board rests.

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record. Is there any objection?

Mr. Persinger: No objection. I am in agreement with counsel.

Trial Examiner Kennedy: The hearing will be in recess until 9:00 o'clock tomorrow morning.

(Whereupon the hearing adjourned at 10:40 o'clock a. m., until 9:00 o'clock a. m., Thursday, February 3, 1938.)

Proceedings.

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

Room 2
Cochise County Court House
THURSDAY, FEBRUARY 3, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a.m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondent.

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in session.

Motion to Dismiss.

Mr. Kitchel: Mr. Examiner, during the course of the Board's case the complaint was amended so as to include the name of Earl Worden. Mr. Worden has not appeared, nor has any testimony been put on with respect to him. I move now that the case be dismissed as to Earl Worden.

Mr. Persinger: That motion is agreeable with the Board. I omitted to do so yesterday.

Trial Examiner Kennedy: The motion is granted.

Mr. Kitchel: Based upon the Board's evidence, which has now been concluded, respondent wisbes at this time to make motions to dismiss the complaint upon various grounds.

The first motion to dismiss is directed to the case of the following men: William Dougherty, Clyde Bigelow, Milton Wynn and Richard Johnson.

The basis of that motion is that there is no evidence upon which the Board could find that those men have been discriminated against, because of union activities.

With respect to Mr. William Dougherty, the testimony is uncontradicted that he was never a member of the Union, that he did not go out on strike, that he was not in the picket line.

With respect to Clyde Bigelow, Mr. Bigelow has testified that he was not a member of the Union, that he was never in the picket line.

Mr. Milton Wynn's testimony was to the effect that he was never a member of the Union after the year 1934, that he never was in the picket line.

With respect to Mr. Richard Johnson, the testimony is uncontradicted that he was never a member of the Union until he went to work for the Shattuck Denn in April of 1936, that he was not an employee of the company at the time of the walkout, and that he did not go in the picket line at any time.

On those grounds, Mr. Examiner, we move to dismiss the complaint as to those four men.

Trial Examiner Kennedy: Do you wish to speak on that?

Mr. Persinger: If the Examiner please, I haven't carefully checked the testimony of these four, but my recollection is there is a certain amount of testimony that they were denied employment by the company on the ground either that in one case his family, I believe, had been active in the union and was not in good standing with the company, and in other cases, one case, I believe, that he had not co-operated with the company which, I submit, is somewhat vague and indefinite; and I believe in the other two cases they were denied employment on the ground they had been affiliated with the union.

As I say, I haven't checked that carefully. If the Examiner wishes, I can do so, but I believe there is sufficient evidence to prove that the refusal of the company to employ these men, or to re-employ them, was for the purpose of discouraging membership in the union. I don't think it is material in those particular cases that the men belonged or did not belong to the union, so long as the company acted on the belief that their sympathies lay with the union.

Mr. Kitchel: Does counsel take the position that anyone rejected for employment was being discriminated against for union activities?

Mr. Persinger: Counsel does not take that position.

Mr. Kitchel: We submit there is no evidence——

Trial Examiner Kennedy (Interrupting): Were all these men out on strike?

Mr. Kitchel: Two of them, Clyde Bigelow and Milton Wynn, were out on strike, according to their testimony.

Trial Examiner Kennedy: How many have you listed there?

Mr. Kitchel: Four, Mr. Examiner.

Trial Examiner Kennedy: Bigelow and Wynn?

Mr. Kitchel: They both testified that they were not members of the union at that time.

Trial Examiner Kennedy: I don't think that is controlling. I will answer you on that point now.

Mr. Kitchel: They both testified that they were not in the picket line.

Trial Examiner Kennedy: I don't think that is controlling, either.

Mr. Kitchel: Now, Mr. Examiner, do we know that they were out on strike?

Trial Examiner Kennedy: Is their testimony that they were out on strike?

Mr. Kitchel: That is their own testimony.

Trial Examiner Kennedy: Very well. That is not contradicted yet. You will have a chance to rebut that, if you can; that is, as to Bigelow and Wynn.

The motion to dismiss as to those two gentlemen is denied.

Now, as to the other two men, what are the facts?

Mr. Kitchel: Mr. Dougherty was not employed by the company at any time after October 25, 1935. He was not a member of the union; he therefore did not go out on strike because he was not in the employ.

Secondly, he was not in the picket line.

Trial Examiner Kennedy: Do you know what the facts are on that, Mr. Persinger?

Mr. Persinger: No, Mr. Examiner. I do not know offhand.

Trial Examiner Kennedy: I will reserve ruling on the motion as to Dougherty until Board's counsel has made answer to that.

Mr. Persinger: I would suggest, Mr. Examiner, that possibly, if I had a chance to go through these exhibits, I may solve one or two of these questions.

Trial Examiner Kennedy: I don't think that is necessary.

Mr. Persinger: I will do that during the recess.

Trial Examiner Kennedy: I beg your pardon?

Mr. Persinger: I think I can do that during recess.

Trial Examiner Kennedy: Yes. I will reserve ruling on Dougherty at this time.

Now, what is the fourth man?

Mr. Kitchel: The fourth man, Mr. Johnson, was never employed by the Phelps Dodge Corporation. He testified he was never a member of the union until he went to work for Shattuck Denn Mining Corporation in April, 1936, and he was not in the picket line.

Mr. Persinger: I believe, Mr. Examiner, that he further testified that he was told that his family was not in good standing. I think he was the one.

Trial Examiner Kennedy: He was refused employment, was he not, Mr. Kitchel?

Mr. Kitchel: I will have to check that.

Mr. Persinger: On the present testimony, he was refused employment.

Trial Examiner Kennedy: That is my impression.

Mr. Persinger: I think he was in a CCC camp during the time of the strike, and he requested employment afterwards and was refused.

Trial Examiner Kennedy: I will reserve ruling on Dougherty and Johnson until the testimony has been checked by the Board's attorney.

Mr. Kitchel: We would like, if possible, Mr. Examiner, to get rulings on some of these cases, in order to shorten the defense testimony.

Trial Examiner Kennedy: I think that point is well taken. I believe, if we take a 2-hour recess at lunch time, we can check those things and close those matters after lunch.

Mr. Kitchel: If it is agreeable with the Examiner, I will go through these motions and place them before

the Board's attorney, so that counsel will have an opportunity to check the record as to them.

Trial Examiner Kennedy: Very well.

Mr. Kitchel: Respondent moves to dismiss against the following individuals:

William Guess, William Day, Levi Crandall, John P. Foley, Vernon Curtis, Grover Cornett and Richard Johnson, upon the grounds that, from uncontradicted testimony, they were not employees of the Phelps Dodge Corporation, Mines Division, on or immediately prior to June 10, 1935.

In that respect, Mr. Examiner, I call attention to Section 10 (c) of the National Labor Relations Act, which authorizes the Board to take affirmative action in connection with the reinstatement of employees with or without back pay. That is the limit of the Board's authority.

There is no way upon which these men can be found to be employees, or striking employees.

Trial Examiner Kennedy: Mr. Persinger?

Mr. Persinger: Mr. Examiner, it is true that if they were not employees at the time the Act became effective, they cannot be reinstated; but it does not follow that they cannot be made whole for any loss of pay they may have suffered by reason of a refusal to reinstate them, up to such time as they may have secured other and substantially equivalent employment, because, to permit respondent to avoid liability for loss of pay by laying off a man for a period, say, of three or four weeks, and then reinstating him, that is a very good penalty which the employef can use for the purpose of discouraging membership in a labor organization.

It is therefore essential, for the purpose of enforcing the Act, that back pay for non-employees be allowed by the Board in certain instances.

I think that substantially all of these cases would fall into that category. I cannot cite a particular case, because I do not know that there has been a Board decision as yet, although there have been one or two cases tried on that point.

Mr. Kitchel: I submit, Mr. Examiner, there are no decisions by the Board——

Trial Examiner Kennedy: There are no decisions.

Mr. Kitchel (Continuing): —which would authorize their reinstatement. I object to the use of that word by counsel because, obviously, from their own testimony they were not employees at any time.

Trial Examiner Kennedy: Well, the refusal to employ, assuming they were not employees at the time they asked for employment, might be made the basis of the complaint.

Mr. Persinger: That is the basis of the complaint.

Trial Examiner Kennedy: Might that not be right?

Mr. Kitchel: You then are now no longer using the word "reinstatement". It is just as if a stranger of this company had applied for employment.

Trial Examiner Kennedy: In that case, if they were denied employment because of union activities, that would violate the Act, would it not?

Mr. Kitchel: If there is a possibility of the Board ruling to that effect upon this motion, we make the contention that any such contention would be a denial of liberty of contract under the Fifth Amendment. There is no court decision which authorizes a finding of that sort. Where there is a case either of striking employees or discharged employees, the courts have stated in many instances that there no new contract is required because a man has not been working because of an unfair labor practice, or an apparent labor dispute; but in the case of a stranger

who has made application, if the Board should order his employment, we are getting into a field upon which there are no decisions to support the Board in such action.

Trial Examiner Kennedy: The Act seems to me to be quite specific in that. Section 8(3), "it shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Mr. Kitchel: Has the Examiner read Section 10(c)?

Trial Examiner Kennedy: Oh, yes. That is not exclusive, as I see it. Your reference there to reinstatement does not stop the Board from issuing a cease and desist order.

Mr. Kitchel: Well, in that connection, as I have already stated, we base that motion on the ground that any action on the part of the Board would be invalid under the Fifth Amendment.

Trial Examiner Kennedy: The motion is denied as to the last group of employees named.

Mr. Kitchel: Respondent next moves to dismiss with respect to the following employees: Clyde Bigelow, Henry Waters, H. D. Edge and William Morris, on the ground that by virtue of their own testimony, they are unemployable.

Mr. Persinger: Excuse me. What was the last name?

Mr. Kitchel: William Morris.

Mr. Persinger: Is that J. M. Morris?

Trial Examiner Kennedy: M-o-r-t-e-n-s-o-n, is that right?

Mr. Kitchel: No, Morris, this one is. J. M. Morris.

Trial Examiner Kennedy: M-o-r-r-i-s?

Mr. Persinger: Yes.

Trial Examiner Kennedy: Mr. Persinger, do you wish to speak on that?

Mr. Persinger: There is no testimony in the record, Mr. Examiner, as to when these persons ceased to be employable. They were employable at the time of the strike. It is a matter of administrative procedure to determine when they ceased to be employable and determine any loss of pay they may have suffered.

Further, so far as the physical examinations are concerned, the only physical examination given is at the time when a man seeks employment. In other words, there is no evidence present that there is any regular examination period. Those persons would have continued to be employed by the company, so far as anyone knows, if they had not been refused reinstatement immediately following the strike, and that is the basis for contending that they are entitled to back pay for a certain period, at least.

Also, it is altogether possible that there are positions above-ground which those men could fill, and I don't want to say at this time whether or not the Board validly ordered them reinstated to a different position than that held formerly. I would have to give more thought to that particular question. I have never been concerned with it before, but I think that question is open to argument. However, certainly the case should not be dismissed as to those four.

In other words, it is a question of remedy, not the violation of the Act.

Mr. Kitchel: I will state, as an exception, Mr. Examiner, it is the testimony of Mr. Henry Waters that he was rejected at the Shattuck Dean on account of his bad lungs, and he could not go to work on account of his bad health.

Trial Examiner Kennedy: Even so, his dismissal would support an order to cease and desist, would it not, if the dismissal violated the Act?

Mr. Kitchel: You can't have an order to cease and desist on account of his health.

Trial Examiner Kennedy: You do not contend that he was unable to work at the time he was dismissed, do you?

Mr. Kitchel: I admit there is no evidence as to that.

Trial Examiner Kennedy: The motion to dismiss is denied as to those three men.

Mr. Persinger: Do you mean four, Mr. Examiner?

Trial Examiner Kennedy: I have Bigelow, Waters, Morris, and who is the other one?

Mr. Persinger: H. D. Edge.

Mr. Kitchel: Mr. Examiner, the respondent moves to dismiss the cases as to the following men: Leonard Guess, William Dougherty, William Day, Levi Crandall, John P. Foley——

Strike all that, Mr. Reporter. I have the wrong list here.

This motion goes to the following cases:

William Day, Levi Crandall, E. L. Hargus, John Henry Key, George Frazee, John P. Foley, Edward Bowden, Paul Amaro, Wilfred D. Mortenson, Anson Perry Windsor, Grover Windsor, Vernon L. Curtis, Grover Cornett.

Mr. Persinger: Excuse me. Will counsel wait a moment. I am lost. A. P. Windsor and whom?

Mr. Kitchel: Grover Windsor, Vernon L. Curtis, Martin Vaclav, Monte Reed, Alexander Kalastro, W. H. Bigelow, William H. Windsor, Ellis M. Scales, F. H. Erkkila, Luke Sertich, Merrell Ernest Johnson, William D. Graham, Jesse Edge, Richard Johnson, William E. Sharp, Jr., H. D. Edge, Milton Wynn, P. C. Lytle, Lester F. Bethel, Leonard Guess, Ben H. Stringer, Tom Abedin, Pete D. Caretto, Mike Mihe-

lich, J. M. Morris, Clyde E. Bigelow, and Joe Henry Douglas.

The motion to dismiss in those particular cases is based upon the fact that from the testimony elicited from these witnesses on the Board's case, they have each and all of them received regular and substantially equivalent employment; that they have lost their status as employees under the definition of an employee under Section 2, Subdivision 3, of the Act. The Board's authority is limited to the reinstatement of employees within Section 10(c) of the Act. In order to reinstate these men or give them employment, respondent would be ordered to enter into a new contract to hire men who are, in effect, strangers to the corporation; that such a ruling would be in contravention of the provisions of the Fifth Amendment, and if such new contracts were ordered, with back pay, the provisions of the Fifth and Seventh Amendments would be violated.

If there was no order with respect to their being re-employed, but merely an order that they should receive back pay until such time as they received regular and substantially equivalent employment, such an order would be beyond the authority of the Board under Section 10(c) of the Act, and if such an order was entered into it would be in violation of the provisions of the Fifth and Seventh Amendments to the Constitution.

I might state, Mr. Examiner, that as to the first 25 men on that list, all of them are presently employed at the Shattuck Denn Mining Company.

Trial Examiner Kennedy: How many have you got on that list all told?

Mr. Kitchel: Thirty-eight.

Trial Examiner Kennedy: What is your position, Mr. Persinger?

Mr. Persinger: It is the Board's position that these men have not secured other regular and substantially equivalent employment for five reasons:

One is that they have all lost their seniority. It has been testified that lay-offs at the Copper Queen Mine were determined on the basis of seniority, single men first, the seniority of single men first, and then the seniority of married men.

It has been testified that in the past there have been large lay-offs during the recent depression at the Copper Queen Mine; that the Shattuck Denn Mine closed down altogether. I think the Board can take judicial notice of the fact that during depressions there are large lay-offs, and the loss of seniority in the case of some of these men, seniority of perhaps from 10 to 15 years, means the difference between security and non-security whenever a mass lay-off occurs.

Secondly, that in applying for employment at the new place the record of continuous service at their previous place of employment is of considerable importance. Those men have lost that record. To some of them the records are of a great many years' continuous service which has put them at a disadvantage in applying for jobs elsewhere. Many of them have lost their safety, honor-roll records, which, it has been testified, is of considerable importance, particularly in securing jobs elsewhere and, also, in the case of lay-offs.

They have lost a certain security by losing those honor-roll records. It has been testified that there is in the minds of some of these men the fear that they are blacklisted in this community. There is further testimony that many of them have applied at many mines in this district and have been unable to secure employment at any place except the Shattuck Denn.

They believe they have been blacklisted, and until they are reinstated and their records of the Phelps Dodge made continuous, that fear of blacklist would eliminate the possibility of contending that their present employment is substantially equivalent to what they had.

Lastly, each of their employment records, which have been introduced in evidence, bears the notation "Walked out on strike," and in most instances, "Was active on the picket line."

In applying for employment I think the Board may take judicial notice of the fact that it is customary to ask a man where he was previously employed and to contact his previous record and to check that previous record. I think the Board may well take judicial notice of the further fact that many employers would hesitate to employ a man whose previous record bears the notation which appears on the record in evidence. Until that record is wiped out by reinstatement and making their employment continuous with the Phelps Dodge Corporation, no employment at any mine in the State of Arizona could be substantially equivalent.

Mr. Kitchel: I take issue with counsel on several of those statements. In the first place, apparently counsel is not familiar with the fact that in this state we have what is known as a "blacklist statute." There is no testimony to the effect that any of these men feel that they have been blacklisted. There is no testimony that any of them went around in this district and applied for jobs at mines in this district and were rejected.

There is evidence that 25 of them are now working at the Shattuck Denn Mining Company. The blacklist statute prohibits the company from furnishing the record, such as counsel himself has ordered us to

produce and has put in evidence, to any other employer who might request that information.

If the grounds stated by counsel in resisting this motion are correct, counsel, in effect, said that there is no such thing as regular and substantially equivalent employment. It is perfectly obvious that any man who leaves the service of one company where he may have worked for two or three years and goes to work for another company, that, even though it be at precisely the same job, he has with that new employer not the same seniority status, accident record, safety record or honor-roll record that he would have with his old employer. If counsel's contentions were correct, there could be no such thing as regular and substantially equivalent employment.

There is testimony in abundance in the record to the effect that the Shattuck Denn Mining Company's operations are substantially similar, the rate of pay is the same, the employment is regular and continuous. We contend that at least with respect to those 25 men there is no alternative for the Board but to dismiss as to them.

Mr. Persinger: There is one further point, Mr. Examiner, namely, that whether or not these men have secured substantially equivalent employment, even if they have, is not grounds for dismissal, since there is clear evidence that the company violated the Act in refusing to reinstate them following the strike.

One point counsel made, I think, perhaps, I did not express myself clearly upon. It was testified by one witness that he thought he had been blacklisted. Whether he has is a matter of fact which, I think, is not material. Unquestionably, that feeling exists in the minds others or, at least, it exists in the mind of one. Substantially equivalent employment should not be adjudged entirely on a material basis. If the

men feel, or any of them feel, that they have been, or he has been, blacklisted, that is sufficient to make their present employment not substantially equivalent.

As to counsel's contention that on the statement made by me there can be no such thing as substantially equivalent employment, I am inclined to agree with counsel that in this state there can be no substantially equivalent employment for any of these men who were refused reinstatement following the strike, because a number of them are middle-aged, most of them are married, and security is a very important item. If a man gives up that security voluntarily, that is one thing. If he is denied that security by reason of a violation of the Act, that is something else altogether.

Trial Examiner Kennedy: The motion will be denied.

Mr. Kitchel: Respondent moves to dismiss, Mr. Examiner, as to all of the 45 cases pending, upon the ground that the Board has adduced no evidence to establish that respondent has committed an alleged unfair labor practice affecting commerce, as described in the Act.

I call the Examiner's attention to the definition of "affecting commerce," in Section 2 (7) of the Act, to the effect that: "Affecting commerce means in commerce or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce, or the free flow of commerce."

I also call the Examiner's attention to the language of Chief Justice Hughes in the Jones and Laughlin case, in which he stated that: "Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to Federal con-

trol and, hence, to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise."

There is not one bit of evidence to the effect that the alleged unfair labor practice here has led to a labor dispute or has in any way tended to create a labor dispute between respondent and any of its employees.

Mr. Persinger: If the Examiner please, counsel is arguing that a successful unfair labor practice is not within the scope of the Act.

Trial Examiner Kennedy: The motion is denied.

Mr. Kitchel: Mr. Higgins, will you take the stand, please?

GILES HIGGINS, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: Giles Higgins.

Direct Examination:

Q. (By Mr. Kitchel) Mr. Higgins, are you an employee of the Phelps Dodge Corporation at the present time? A. Yes, sir.

Trial Examiner Kennedy: Speak out.

The Witness: Yes, sir.

Q. (By Mr. Kitchel) When did you first go to work for the Phelps Dodge Corporation? A. About the 26th or 27th of June, 1935.

Q. Prior to the time of the 25th or 26th, or thereabouts, of June, 1935, were you rustling a job with the Phelps Dodge Corporation? A. Yes, sir.

Q. How long before those dates that we have mentioned were you rustling? A. Well, about three weeks—two or three weeks; I wouldn't be positive of it.

Q. Were you rustling prior to the walkout on June 10, 1935? A. Yes, sir.

Q. Were you rustling at any time between June 10, 1935, and June 25, 1935? A. Yes, sir. I rustled every day.

Q. Did you ever see the picket line at any place near the point where you were rustling? A. Yes, sir.

Q. Would you describe, Mr. Higgins, for the Trial Examiner, the time at which rustling commenced and the time at which the picketing line appeared, and what activity, if any, went on during that period? A. Well, the picket line formed as the men went to work in the morning, about 6:30 or 7:00 o'clock, I would say, and the employment office opened at 7:00, and the rustling commenced also at that time.

Q. Did the pickets attempt to picket those rustling the jobs? A. Yes, sir.

Q. Were there any conversations held between the pickets and the rustlers? A. Yes, sir; there was.

Q. Were there any attempts upon the part of the pickets to dissuade the rustlers from getting jobs? A. Yes, sir.

Q. Do you recall at any time during that period Mr. Bateman coming out on the platform? A. Yes, sir.

Q. Do you recall the pickets ever shouting at him? A. Yes, sir.

Q. Do you recall the morning of June 25, 1935? A. Yes, sir.

Q. Was that the day that you were employed? A. Yes, sir.

Q. Were you acquainted with Mr. William Day? A. Yes, sir.

Q. Did Mr. Day attempt to stop you from getting employment that day? A. Yes, sir.

Q. What did he do on that date? A. Well, as I—there was several of us fellows rustling for work, and I was in

line, and several men walked in ahead of me, into the employment office. As I walked up the steps, started to step upon the steps, Mr. Day hit me in the nose.

Q. Did he hit you with his bare fist? A. No, sir; he was wearing gloves, I would say pigskin gloves, and it seemed kind of funny to me that he would be wearing gloves in the Summertime; it was June, of course.

Mr. Persinger: Just a moment. I move that that remark be stricken.

Trial Examiner Kennedy: That part starting, "it seemed kind of funny," may go out.

Q. (By Mr. Kitchel) Where did he strike you? A. In the nose.

Q. What did you do after that? A. Well, I went on into the employment office and the doctor fixed up my nose. Mr. Day and I had a few words. Of course, he was talking, I guess, quite a bit all the time.

Mr. Persinger: Just a moment. I move that that remark be stricken.

Trial Examiner Kennedy: Read that part, after "of course," Mr. Reporter.

(The record referred to was read by the Reporter as set forth above.)

Trial Examiner Kennedy: That may stay in.

Q. (By Mr. Kitchel) Mr. Higgins, were you hired at the time you then went into the employment office? A. Yes, sir. I was hired that day.

Q. Did you later file charges against Mr. Day? A. Yes, sir.

Q. Did you appear against Mr. Day on his preliminary hearing? A. Yes, sir.

Q. What was the charge filed against Mr. Day? A. Felony and assault, I think; it was hitting a guy under age; I wasn't of age at that time.

Q. Did you know what the penalty was for that offense? A. Yes. I know it was pretty severe.

Q. Was Mr. Day bound over to the Superior Court? A. Yes, sir.

Q. Was his case ever tried? A. No, sir.

Q. Why was his case never tried? A. Because the day before the trial I came out and had a frank talk with Mr. Frank Thomas and the Judge.

Q. Who is Mr. Frank Thomas? A. The County Attorney.

Q. Who was the Judge? A. Judge Ross.

Q. What was the nature of your conversation with them? A. Well, I kind of felt—I don't know; I kind of felt sorry for Mr. Day. They had a pretty serious charge against him, and it might have meant three or four years in the penitentiary for him.

Mr. Persinger: Just a moment. I move that both remarks be stricken as a conclusion of the witness.

Mr. Kitchel: I am attempting to show the reason that this case was dismissed. All of this testimony goes, first, to the activity of the pickets in the neighborhood of the employment office; and, secondly, it goes to the impeachment of Mr. Day's testimony.

Trial Examiner Kennedy: Yes. I will let it stay in.

Q. Let me ask you what request you made of the County Attorney and the Superior Court Judge? A. Well, I told him that I wished to withdraw my charges because I didn't want to see the men get a sentence in the pen; it would just overhang me.

Trial Examiner Kennedy: A little louder, please.

The Witness: Shall I repeat all the answer?

Trial Examiner Kennedy: No, but from now on speak out so everybody can hear you.

Q. (By Mr. Kitchel) Were you given any assurance at that time that there would be nothing further of that sort? A. Well, I told the judge and Mr. Thomas that if the men would leave me alone I didn't want to have any trouble with anybody at all. I wasn't going to bother anybody, and if they would leave me alone I was willing to dismiss the charges against Mr. Day.

Mr. Kitchel: You may take the witness.

Mr. Persinger: If the Examiner please, counsel has stated that the evidence was in for two purposes: If he is attempting to discredit the testimony of Mr. Day, of course, it is permissible.

On his other ground, I move to strike it as being wholly unrelated to any issue before the Board.

Mr. Kitchel: May I speak on that, please?

Trial Examiner Kennedy: I don't think it is necessary. The motion is denied.

Mr. Persinger: No questions.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

W. E. Simpson, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: W. E. Simpson.

Direct examination:

Q. (By Mr. Kitchel) Mr. Simpson, are you employed by the Phelps Dodge Corporation at the present time? A. Yes.

Q. And how long have you been employed by the Phelps Dodge Corporation? A. Since August 21, 1935.

Q. When did you first come to the Bisbee district, Mr. Simpson? A. About July 15, 1935.

Q. Did you go to work immediately for the company? A. No, sir.

Q. Did you seek employment with the company at any time between July 1, 1935, and August 21, 1935? A. Yes, sir, I rustled on July 22, 1935.

Q. You were in the rustling line on July 22, 1935? A. Yes, sir.

Q. Were there any pickets present at the time that you were rustling on July 22, 1935? A. Yes, sir.

Q. Was there any difficulty or trouble between the pickets and those rustling? A. Yes, sir, there was a little.

Q. Was there any attempt upon the part of the pickets to dissaude men from applying for jobs? A. Yes, sir, there was quite a bit.

Q. Was there any violence of any sort? A. No violence.

Q. On that date, July 22nd, did the employment agent, Mr. Bateman, come out on the platform? A. Yes.

Q. Did the pickets yell at him? A. They hooted at him a little, and yelled at him.

Q. Did Mr. Bateman pay any attention to their activities? A. No, sir.

Q. On that date, did Mr. Bateman call any men into his office? A. Yes, sir.

Q. Were you called in at that time? A. Yes.

Q. Were you hired on July 22, 1935? A. No, sir.

Q. Were you given a physical examination on that date? A. Yes, sir.

Q. And what were you told? A. That I had failed the examination and was told to apply 30 days later if I still wanted to.

Q. When was the next time you returned to make application? A. August 21st.

Q. Do you remember what day of the week that was? A. It was on a Wednesday.

Q. Were you in the rustling line that day? A. Yes, sir.

Q. How many men would you say were in the rustling line that day? A. Approximately 30.

Q. And were there any pickets present? A. Yes, sir.

Q. About how many would you say were in the picketing group? A. About 20.

Q. Did Mr. Bateman come out to the platform that morning? A. Yes, sir.

Q. What did he say, if you recall? A. Mr. Bateman called in two men and then he says, "That will be all for this morning. Next rustling day will be next Friday."

Q. Did he say anything further? A. No.

Trial Examiner Kennedy: Speak out.

The Witness: No.

Q. (By Mr. Kitchel) Did you hear anyone shout at Mr. Bateman "How about my job?" A. I heard someone, yes, sir.

Q. Where were you standing? A. I was standing right next to the steps where the usual line of rustlers stood.

Q. Were you standing between Mr. Bateman and the picket group? A. Yes.

Q. Did Mr. Bateman make any response to those shouts about "How about my job"? A. No.

Q. Would you have heard him if he had? A. I should have. I was standing between them.

Q. Did Mr. Bateman say anything further? A. No, sir.

Q. Did Mr. Bateman then return into his office? A. Yes, sir.

Q. What did you do? A. I waited until the rustlers left and then I went in myself to see Mr. Bateman.

Q. Were you hired on that date? A. Yes, sir.

Q. When did you go to work? A. The 22nd of August.

Mr. Kitchel: Take the witness.

Cross examination:

Q. (By Mr. Persinger) Mr. Simpson, what time did you go on the rustling line on the morning of August 21st? A. August 21st—it must have been about 7:00 o'clock when I went.

Q. And how long was it after that that Mr. Bateman called two men in? A. It must have been about 20 minutes until 8:00, I would say.

Q. About 20 minutes to 8:00? A. Yes, sir.

Q. What time was it that Mr. Bateman first came out on the stoop or platform? A. About 20 minutes until 8:00.

Q. And when he came out, what did he say, what did he do? A. He called two men in.

Q. And what words did he use? A. He just said he wanted to see—he called the two men.

Trial Examiner Kennedy: A little louder, please.

The Witness: He called the two men's names that he wanted to go, and called them in.

Q. (By Mr. Persinger) He merely came out on the stoop and called some name, and another name, "Come in here"? A. Yes.

Q. Is that all? A. Well, he turned around then and said, "That will be all until Friday, the next rustling day."

Q. And how long did it take him to call those two men in after he got out on the platform? A. Well, not very long.

Q. Two or three minutes, perhaps? A. Well, it wouldn't take that long. Less than that, I imagine. Just long enough to say, "It would be all."

Q. And you were hired later on that same day? A. Yes, sir.

Q. How do you estimate the time as being 20 minutes to 8:00? A. Well, because I usually went down at 7:00 o'clock. That was the usual time for the men to gather that rustled, and the office usually opened around 7:30, and Mr. Bateman

usually came out just a few minutes after the employment office opened.

Q. When you reached there at about 7:00 o'clock, how many pickets were standing around? A. There was approximately 20 men.

Q. Were you one of the first of the rustlers? A. Yes, sir.

Q. By the time it was 7:30, was the group substantially the same as it was at the time Mr. Bateman came out on the platform? A. Rustlers?

Q. The number of rustlers, the number of pickets. A. There were a few more rustlers at that time than there was at 7:00 o'clock.

Q. And at 7:30 and before that there was substantially 30, approximately, rustlers, say, by 7:20? A. I would say that, yes.

Q. About 20 pickets? A. Yes, sir.

Q. Do you know what time the shift went on that morning? A. 7:00 o'clock, I think it was.

Q. 7:00 o'clock? A. Yes, sir.

Q. And there were 20 pickets standing around, some rustlers, when you got there at 7:00? A. Yes, sir.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What is your present position? A. Miner.

Q. Have you had the same position all the time you have been at Phelps Dodge? A. No, sir, I hired out as a mucker, but I am mining now.

Q. When did you get promoted? A. I got promoted in March of this year, '37—but I have held different jobs between then. I have had several promotions and several demotions.

Q. Did you ever belong to the union? A. No.

Q. Are you under subpoena here? A. No.

Q. How did you happen to come down here to testify? A. Well, Mr. Bateman asked me what I knew, and I told him, and he asked me if I had any objections to coming down and telling them what I knew, and I said no.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

W. H. Crane, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: W. H. Crane.

Direct examination:

Q. (By Mr. Kitchel) Mr. Crane, were you employed by the Phelps Dodge Corporation at any time in the Summer of 1935? A. Yes, sir.

Trial Examiner Kennedy: Speak out loud so everybody can hear you.

Q. (By Mr. Kitchel) When were you hired, Mr. Crane? A. Well, I was hired about two or three days before the strike was called off.

Q. Do you remember what the day was that you were hired? A. Not just exactly.

Q. Do you remember the day of the week? A. No, I don't.

Q. Did you rustle several times before you were hired? A. Yes, I rustled two or three days, three days it was.

Q. What month of the year was that? A. That was in August, I believe.

Q. Were there pickets present when you were rustling? A. No, not the employment office.

Q. Not at the employment office? A. No.

Q. Do you recall the date on which you were hired? A. Sir?

Q. Do you recall the date on which you were hired? A. Yes, I was called in.

Q. Were there any pickets standing out there that day? A. Not that I noticed, never said anything.

Q. Did you hear any pickets say anything to Mr. Bateman that day? A. No, sir.

Q. Do you recall Mr. Bateman coming out on the platform that morning? A. Yes, sir, he came out and called me in.

Q. Did he call anybody else in? A. Yes, I believe he called another feller in.

Q. Did he call just two men in? A. I believe it was; that may be; it was quite a while ago. There was two of us went in, I know.

Q. Did you hear Mr. Bateman say anything, or make any statements, to the crowd? A. No, sir.

Q. Did he follow you right in? A. Yes, sir.

Mr. Kitchel: Take the witness.

Cross examination:

Q. (By Mr. Persinger) What day were you employed, Mr. Crane? A. Well, I couldn't say just exactly.

Mr. Persinger: No further questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) It was some time in the Summer of '35 that you were employed? A. Yes, sir.

Q. And you are still employed? A. No, sir.

Q. When did you leave? A. I left about a year later.

Q. Did you ever belong to a union? A. Yes, sir.

Q. What union? A. Western Federation of Miners.

Q. Are you still a member? A. No, sir.

Q. When did you cease being a member? A. Oh, about —I quit.

Q. Well, when was that? A. Oh, I guess around about 1910.

Q. 1910? A. Yes.

Q. You haven't belonged to any union since 1910? A. No, sir.

Q. What are you doing now? A. Ranching.

Trial Examiner Kennedy: Anything further.

Mr. Kitchel: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: May we have a short recess at this time?

Trial Examiner Kennedy: Yes, we will take a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Kitchel: Mr. Examiner, will there be any further need for Mr. Simpson, Mr. Crane and Mr. Higgins?

Mr. Persinger: Not as far as I am concerned.

Trial Examiner Kennedy: They are permanently excused.

Mr. Kitchel: Mr. Newton, will you come over, please?

IRVINE EARL NEWTON, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please?
The Witness: Newton, Irvine Earl.

Direct examination:

Q. (By Mr. Kitchel) Mr. Newton, are you employed by Phelps Dodge Corporation at the present time? A. Yes, sir.

Q. When did you go to work for the Phelps Dodge Corporation? A. On August 22nd.

Q. Of what year? A. 1935.

Q. What day in 1935 were you hired? A. On August—on the 22nd of August.

Q. August 22nd? A. Yes.

Q. Were you in the rustling line the day preceding August 22nd, 1935? A. Yes, sir.

Q. What date was that? A. That was in '35.

Q. What day of the month was that? A. The 22nd of August.

Q. Well, I asked you if you were in the line the day preceding that? A. Oh, no; no, I wasn't.

Q. The morning you were hired, Mr. Newton, were there any pickets at the time you were in the rustling line? A. Yeh.

Q. How many pickets would you say were standing around at that time? A. Well, I didn't know the men, but I would say four or five, in a way.

Q. Are you acquainted with Mr. William Day? A. Well, I wasn't at the time; I know him now by sight.

Q. On the morning that you were hired, did Mr. Bateman come out on the platform? A. Yes.

Q. What did he do, Mr. Newton? A. Well, he called two gentlemen's names. He said, "That will be all this morning, boys."

He went on in and went back.

Q. Did you hear anybody in the picket line holler at him? A. Yes.

Q. What was said? A. Well, I don't know the exact words, what was said on that. They just hollered something to the effect that, "If we don't get our jobs back," or——

Q. Did Mr. Bateman make any response to that? A. No.

Q. Was anything said by Mr. Bateman further than what you have testified? A. No.

Q. Did he go back into his office? A. Yes.

Q. After he made the statement you have testified to? A. Yes.

Q. What did you do after the rustling line broke up that day? A. I walked in the office to see Mr. Bateman.

Q. Did you go to work that day? A. Yes.

Mr. Kitchel: I believe that is all.

Cross examination:

Q. (By Mr. Persinger) You were employed August 22nd? A. Yes.

Mr. Persinger: No questions.

Trial Examiner Kennedy: You are excused.

Mr. Kitchel: May this witness be permanently excused?

Mr. Persinger: Yes.

Trial Examiner Kennedy: That will be the ruling as to each witness, unless counsel in the case state they wish the witness to be recalled.

(Witness excused.)

Mr. Kitchel: Mr. Herbert, will you come forward, please.

Earl Herbert—For Respondent—Direct.

EARL HERBERT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please.

The Witness: Earl Herbert.

Direct examination:

Q. (By Mr. Kitchel) Mr. Herbert, are you employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. At the present time? A. Yes, sir.

Q. When were you first employed by the Corporation? A. This last time, I went to work September 26th.

Q. Of what year? A. 1935.

Q. Were you in the rustling line on August 21, 1935? A. Yes, sir.

Q. How many men would you say were rustling that morning when you were there? A. Oh, I would say between 30 and 40.

Q. Were there any pickets present? A. I couldn't recognize them as pickets down around the employment office. There was a few up around the gate. There was a few men standing there. I wouldn't recognize them as pickets.

Q. Did Mr. Bateman come out on the platform that morning? A. Yes.

Q. Do you recall what he did and said? A. He called in three men.

Q. Did he make any statement? A. No, sir.

Q. Did you hear anybody call out to him about a job? A. There was some man in the back of the crowd said something about, "When am I going to get my job?" or some words to that effect. I couldn't repeat the exact words.

Q. Did Mr. Bateman make any reply to that? A. No, sir.

Q. Were you present the whole time Mr. Bateman was on the platform? A. No. I went into the office just before Mr. Bateman did.

Q. Did he follow you in? A. Yes.

Q. Would you have heard anything if he had said it? A. I think I would have.

Mr. Kitchel: That is all.

Cross examination:

Q. (By Mr. Persinger) Mr. Herbert, when did you first start rustling in the Summer of 1935? A. Well, I rustled off and on nearly all Summer.

Q. Do you remember about when you started, for the first time? Was it before or after the strike? A. It was before the strike.

Q. Before the strike? A. Yes.

Q. And you continued to rustle until what time? A. Until the 26th of September.

Q. Until you received employment in September? A. Yes.

Q. Did you rustle every day during that period? A. Oh, no; I only rustled, I would say, maybe five or six times.

Q. Maybe five or six times? A. I was working part time for different people around town; just odd jobs.

Q. When was the date on which you first rustled? A. Well, it would be about the middle of March.

Q. Do you remember the exact date? A. No, I don't.

Q. What was the second time you rustled? A. Well, I couldn't give you the exact dates.

Q. Could you give an approximate date? A. Well, it would be somewhere around the middle of April, the second time.

Q. When would be the third time? A. Well, I couldn't definitely say. It would be—let's see. I was working on odd jobs around. Sometimes they would last six or seven days; sometimes a week, and I just rustled when I wanted to work, and I couldn't tell you the exact dates.

Q. How many times would you say you rustled prior to the strike? A. I would say about four.

Q. And after the strike, how many times did you rustle before you actually got a job? A. Once.

Q. Just once, one occasion? A. Yes.

Q. And when was that? A. That was—I went to work September 16th; that would be about September 15th.

Q. Well, you had rustled before that after the strike started, hadn't you? A. After the strike started; yes.

Q. Yes. Well, how many times between the time the strike started and the time you got your job did you rustle? A. Twice.

Q. Twice? A. Yes.

Q. And the first time was when? A. The 21st of August.

Q. Now, you said you went into the employment office ahead of Mr. Bateman? A. Just ahead of Mr. Bateman; yes.

Q. Did he call you in by name? A. Yes, but not by my full name. Just called me Earl.

Q. You knew Mr. Bateman? A. Yes, I knew him personally.

Q. What did you do on that occasion, take a physical examination? A. No. We just talked it over and he took more or less of an application, rather, just asked me a few questions about it and told me to come back later.

Q. He took down your application? A. Well, he didn't make out a blank. It was just more or less oral.

Q. In other words, you just talked to him? A. Just talked to him about it.

Q. And you went back the 15th of September and went to work the 16th? A. Yes, sir.

Q. Were you working just before August 21st? A. Had odd jobs around town.

Q. Were you working just after August 21st? A. Well, a few days later; yes.

Q. How do you fix the date as being exactly August 21st? Do you have any written record that it was on August 21st

that you had this talk with Mr. Bateman? A. No, I have no written record; no. I just remember when I went up.

Q. How do you remember the exact date, although you don't remember any other dates except the one on which you got your job? A. That was the first time that I really got in to talk with Mr. Bateman, and I went home and talked to the wife, and she said, "Well, remember it. We might want to refer to it."

Q. Your wife suggested that you remember that date? A. Yes.

Q. Did she say why you might want to refer to it? A. No, not exactly.

Q. And what was the first occasion on which you did want to refer to it? A. I do not remember.

Q. Have you referred to that date at any time until the last few weeks? A. I have talked to my wife about it several times; yes.

Q. When you went back on September 15th, did you stand in the rustling line? A. Yes, until he called me in.

Q. And he called you in by name? A. Yes.

Q. And those were the only two occasions after the strike started that you were on the rustling line? A. Yes.

Trial Examiner Kennedy: Speak out. What was the answer to the last question?

The Witness: "Yes."

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you belong to the Union?

The Witness: No.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

M. A. Bateman—For Respondent—Direct.

M. A. BATEMAN, having been heretofore duly sworn, was recalled as a witness by and on behalf of the respondent, and further testified as follows:

Mr. Kitchel: This witness has been sworn before, Mr. Examiner.

Direct examination:

Q. (By Mr. Kitchel) Mr. Bateman, you have been previously sworn to testify in this case? A. I have, sir.

Q. Have you testified previously in this case that you were the employment agent of the Mines Division of Phelps Dodge Corporation? A. I did, sir.

Q. Were you employment agent in the Summer of 1935? A. Yes, sir.

Q. And for how many years did you hold that position, Mr. Bateman? A. Approximately 12.

Q. And how many years did you testify that you had worked for the company? A. 27,—nearly 27.

Q. Mr. Bateman, at the time that you were employment agent, was every applicant for a job required to take a physical examination? A. Yes.

Q. Were men rejected who had bad lungs? A. Yes, sir. We took no chances whatsoever on a lung condition.

Q. Do you know a Mr. William Dougherty? A. I do.

Q. Have you checked your records to find out when he was last employed by the company? A. Yes, sir.

Q. And when was he last employed by the company? A. In 1934.

Q. Do you know what time of the year? A. No, I do not. I do not know the date.

Q. Did Mr. Dougherty make application for reemployment while you were employment agent? A. He did; yes.

Q. And when was that, Mr. Bateman? A. On January 15, 1937.

Q. Did he make application at any time prior to that that you recall? A. Well, he submitted his application several days prior to that; yes.

Q. Did you talk to him on the first occasion that he made his application? A. Yes, sir.

Q. And what did you tell him at that time? A. As near as I can recollect, I told him that I would look into his record and that he should see me in a few days.

Q. And did he come back? A. He did.

Q. And what happened upon the occasion of his second visit? A. I think I told him to rustle.

Q. Was he given a medical examination that day? A. I believe I called him in that morning, and he was in the rustling line when I called him in, and wrote up his record and had him examined.

Q. Was he hired that day? A. He was selected to be hired.

Q. Was he sent to the hospital for any purpose? A. Yes; following the physical examination he was sent to the hospital for an X-ray.

Q. And when did he come back? A. The following day. I presume it was at 10:00 o'clock; that was customary.

Q. Had you by that time received reports from the examining physician and the hospital? A. I had.

Q. Was Mr. Dougherty employed on that day? A. He was rejected for employment.

Q. Why was he rejected? A. On account of his lung condition.

Q. Did you state to Mr. Dougherty on that date that men had come to you and told you that he had called them "scabs," and that you did not want any trouble, and that therefore you couldn't put him on? A. I don't believe I did. I don't see why I should have had occasion to. He was simply rejected on his physical qualifications.

Q. Mr. Bateman, are you acquainted with Mr. William Sharp, Jr.? A. I am.

Q. When did you last see him? A. In Morenci, Arizona.

Q. What were you doing at Morenci? A. I was there revising and standardizing the employment methods and procedure.

Q. Were you an employment agent of the company at that time? A. I had nothing to do whatsoever with employment matters outside of the system of procedure.

Q. Did you have any authority to hire any persons? A. Not a person, no authority of that nature.

Q. Who was the employment agent of the Phelps Dodge Corporation at Morenci at that time? A. Mr. W. E. A. Hawke, and he has been for many, many years.

Q. Approximately what was the date when you saw Mr. Sharp at Morenci? A. It was in the latter part of October or the first part of November, I believe.

Q. Of 1937? A. Yes, sir. I was there 10 weeks.

Q. What were the circumstances of your seeing Mr. Sharp at Morenci? A. Well, I happened to receive a long distance telephone call and I had to pass from the employment office, which is 400 or 500 feet from the general office in Morenci where the telephone station is situated, and on passing to the office I had to pass, oh, by possibly a hundred men who were there rustling. After I passed these men, I saw Mr. Sharp and some other gentleman sitting on a wall with a rail on it, and I was walking hurriedly in order to catch the call. I just paused a moment and said, "Hello, Sharp. What are you doing up here? Where have you been?" and remarks of that nature, and passed to the office, hardly without stopping. I hardly paused. They were sitting there when I came back. I was only gone a minute or two, and I think I said, "Hello," or smiled at them, and passed on.

Q. Did you have any conversation with him with respect to the possibility of his getting a job with the Phelps Dodge Corporation? A. Not whatsoever. I had nothing whatsoever to do with employment. I had been released from that phase of the work and, naturally, I couldn't intercept Mr. Hawke's duties there. It would have been fatal, if I did, to me.

Q. Was there anything further said between you and Mr. Sharp other than what you have referred to? A. Not

that I recall. It was a very, very brief conversation, and a more or less passing "How-do-you-do."

Q. Mr. Bateman, were you the employment agent at the time of the walk-out on June 10, 1935? A. Yes, sir.

Q. From your office were you able to see the activities of the picket line? A. Well, that is in so far as it was concerned there at the office. There was a raised platform about the height of the desk here (indicating) from the floor, which precedes the entrance into the office and, of course, all my business, in so far as selecting employees, was transacted from that platform.

Q. Mr. Bateman, from June 10, 1935, on for the next month or two, would you outline what the procedure with respect to rustlers and pickets was in the morning? A. Well, at the outset the miners went to work or went on shift at 7:00 o'clock, and the employment office was opened at 7:30. It was the usual procedure for the pickets, of course, to leave the Junction gate and the Campbell gate and arrive at the employment office at about the time I arrived there.

Q. What time was that? A. 7:30. In the meantime some of the boys would stroll to town and loaf about the streets there and come back at the time I arrived. Again, others would get in their cars and remain in their cars. Some of them had their cars there, and when I drove up they would dismount their cars and assemble in front of the office. The rustlers would do the same.

Q. Would you say, Mr. Bateman, that the activities of the pickets who returned to the employment office, as you have testified, were in the nature of picketing in front of the employment office? A. Well, I don't see how I could assume anything else. They were there. They were peaceable at times. Everything was very quiet. There were some days when it was boistrous and there was a lot of yelling, hollering.

Q. From your observations, would you say that there were any attempts to prevent men from rustling jobs? A.

Well, about that, I would say that in most instances they were very orderly. They did talk to men. They would congregate about men. I have seen four or five men talking to one man. They would, of course, pick out the new men and congregate about them. What they said, I couldn't hear.

Q. As employment agent did you consider the men in the group which was derived from the picket line as men who were rustling jobs? A. Well, of course, that would be easy to establish after the third or fourth day. I could determine, of course, by their activities as to what their purpose was there.

Q. Do you recall, Mr. Bateman, the morning of August 21, 1935? A. I do.

Q. Was that a rustling day? A. It was, sir.

Q. Approximately what time did you arrive at your office that morning? A. Well, I was generally quite punctual. It was probably 5 to or 5 after 7:30.

Q. Were there rustlers present? A. Yes.

Q. About how many would you say at the time you went into your office? A. Oh, there were probably 30 rustlers, 35; something like that, I would imagine.

Q. Are you acquainted with Mr. William Day? A. Yes, I have known Mr. Day for quite some time.

Q. Mr. Levi Crandal? A. Yes, and he also.

Q. Mr. Key? A. Yes, for many years.

Q. Were you familiar with all of the pickets? A. Well, probably 90 per cent of them.

Q. Well, was there a group of pickets present on that day when you arrived? A. Yes, there were some then.

Q. Were the men, whom I have mentioned, in the group, if you recall? A. Yes, sir.

Q. Prior to that date, Mr. Bateman, were there any occasions when the pickets called at you and heckled you when you came out on the platform? A. Well, there were lots of days.

Q. Was that an unusual occurrence if that happened? A. No. It went on throughout the whole time of the strike.

Q. When you arrived did you go into your office on the morning of August 21st? A. Yes, sir.

Q. Did you later come out on the platform? A. I did.

Q. What did you do and say? A. Well, as I recall it, and having looked up the records and refreshed my memory, on that particular morning I was going to hire one man only, and in looking over the crowd I saw Mr. Crane who was standing at the foot of the steps. Mr. Crane was a very capable miner and had worked for us for many years, and I said to him, "Are you rustling, Bill"? He said, "Yes." I said, "Come on in." So I hired those two men only.

Q. Did you say anything to the crowd? A. I dispersed the crowd, as I recall, and told them to rustle again on Friday. That was a Wednesday.

Q. Did you hear Bill Day or any of the members of the picket line holler at you about a job? A. Well, they were chattering, and they all were, but I disregarded it, as I had been doing.

Q. Did you make any statement at that time while you were on the platform other than the one that you have testified to? A. Not that I recall.

Q. Did you state, in answer to cries of "How about a job"? that "You fellows will never work for the Phelps Dodge Corporation again"? A. No.

Q. Did you make that statement? A. No.

Q. Mr. Bateman, when you were employment agent, where did you do your hiring? A. At the employment office.

Q. Did you have regular hours? A. Yes, sir.

Q. Did you do any hiring outside of the office? A. None whatsoever.

Q. Were there occasions when people spoke to you on the streets about getting jobs? A. Oh, that was a very common occurrence.

Q. Would you say that you were intimate with most of the men who worked for the company during a period of many years? A. Yes, I knew most of them.

Q. Would you say that you were familiar with the large majority of the people who reside in the district here? A. I think so. I knew a considerable majority of the population.

Q. What would you tell a person when he spoke to you about a job on the streets? A. Well, that all depended. Sometimes wherein a man came up to me very seriously and wanted to discuss employment with me, why, I would spend considerable time with him. And again it is merely a gesture "How about a job"? or "What's doing up there"? or something like that.

If it was more or less a passing remark, I went on about my buisness. Yet I don't think there was anyone that rustled very long that didn't understand that all hiring was to be done at the employment office.

Q. Did you ever hire a man at any place other than the employment office? A. No, sir.

Q. Mr. Bateman, it has been testified in this case that on about the 13th day of June, 1935, from the platform of your employment office you made the following statement: "If you boys don't go back to work tomorrow, you will never work for the company again." Did you make that statement? A. No, and may I add further that at that time I did not know what the extent of the strike was, and would have no reason for making such a remark to anyone.

Q. Are you acquainted with Mr. Paul Amaro? A. Yes.

Q. It was testified, Mr. Bateman, that in your office in the Fall of 1935, around September or October, you made the following statement, or you made a statement to this effect: That you could not consider Mr. Amaro for a job, or any other of the striking miners. Did you make such a statement, or a statement to that effect? A. No.

Q. Are you familiar with Mr. W. D. Mortenson, Mr. Bateman? A. Yes, I know him well.

Q. It has been testified in this case that on or about December 1, 1935, in your office, you made the following statement to Mr. Mortenson: "Mortenson, if you want a job

you will have to go to a union camp to get it. There is nothing in Bisbee for you." Did you make a statement such as that to Mr. Mortenson at any time? A. I did not.

Q. Are you acquainted, Mr. Bateman, with Mr. Tom Abedin? A. Yes.

Q. Do you recall having had a conversation with him on the street at any time during the years 1935 and 1936? A. I may have had several. I saw Tom at intervals of every two or three days there in Lowell.

Q. Did you ever make a statement to Mr. Abedin—perhaps not in these words—to this effect: "No showing for you guys no more." Did you ever make a statement to that effect to Mr. Abedin? A. No.

Q. Are you acquainted with Mr. Grover Windsor? A. Yes.

Q. It has been testified, Mr. Bateman, that you, around December, 1935, or November, 1935, in your office, made the following statement to Mr. Grover Windsor:

"A hundred years after the next war I will give you a job."

Did you make such a statement, or a statement to that effect to Mr. Grover Windsor? A. Was that Grover Windsor?

Q. Yes. A. Or Vernon Curtis?

Q. Grover Windsor, in your office, it was testified. A. I remember one evening I was standing in Lowell talking to a friend of mine who conducts a pool hall there, and Mr. Curtis came by with two or three others. I don't remember now whether Mr. Windsor was with them or not, but they were walking hurriedly down the street. They happened to spy me and they waved their hands, "Hello, Bate; how about a job?" And I said, "Three hundred years after the next war." I remember saying that.

Q. Were you on duty at that time? A. No, that was in the evening. It was dark. I remember it very well. The street lights were on.

Q. Do you always speak, Mr. Bateman, in a very serious tone in your conversations? A. Not always, no.

Q. And who was that you said that you believed you made that statement to? A. I think it was to Vernon Curtis.

Q. Mr. Bateman, are you acquainted with Monte Reed? A. Yes, I have known Monte many, many years.

Q. It has been testified in this case that some time on or about the 21st of June, 1935, you had a conversation with Mr. Reed in your office, in which it was stated that you made the following remark:

"Well, we want you to clean them out because as far as you fellows are concerned, the strike is never going to be over for you."

The testimony was that prior to that there was reference to clothes in the lockers. Was there such a conversation with Mr. Reed? A. What was the date?

Q. About June 21, 1935. A. Well, I think I recall that. It was occasioned due to having put on quite a number of new men following the strike, and we were running out of locker space, and Mr. Reed—this was a payday, and Mr. Riefsnider came to me that morning and asked me to ask any of the boys who had their clothes in the locker that were not working to remove them, that the new men had to change in the aisles and elsewhere, and it created quite a bad condition, and so, as the boys came in for their checks, identification slips, I asked each and all of them if they were working, and if not, to remove their clothes, and made no reference whatsoever to the strike, and I think probably I asked 25 or 30 men that day.

Q. Did they move their clothes out of the lockers? A. Yes, I understand most of them did. We had space after that, I know.

Mr. Persinger: Counsel, off the record, Mr. Examiner?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Who is Mr. Riefsnider? A. He is the master mechanic.

Q. Mr. Bateman, while you were employment agent did you make the statement—strike that, please.

Are you familiar with the names of the 45 men who are in this case? A. Yes, I am.

Q. Mr. Bateman, at any time while you were employment agent did you ever make statements to these or any other men about the union, or about the strike activities? A. No, but just what way do you mean?

Q. Well, you have heard the statements that have been testified to. I am referring to statements of that nature. A. I don't think that I ever discussed the strike with any individual, or their activities, because early in 1933 I think when the Code, the N. R. A., first went into effect it was a provision of that Code that men were not to be interrogated concerning their labor affiliations, and in no instance did I do that, and I have been repeatedly warned against so doing.

Q. Were those instructions given to you on and off down through the year 1935? A. Well, I remember when the Wagner Act went into effect I was again warned concerning that phase of the Act.

Q. You state that you are familiar with the names of men involved in this case. How many of those men would you say, Mr. Bateman, have applied for employment more than once? Have you got a list there that you can refer to? A. I have. Offhand, not more than three or four.

Q. Are there any on that list that, to the best of your recollection, never applied for employment? A. There were 11 who have never applied for employment since June 10, 1935.

Q. How many times, to the best of your recollection, have the balance of that list applied for employment? A.

Well, that determines on that what we would consider an application for employment. Some of them came to the door and hollered in and said, "Is there anything doing?" And others would come in at intervals, or came in once that I know of.

Q. From your experience as employment agent, Mr. Bateman, is it customary as a general rule to hire a man who only makes one application for employment? A. No.

Q. What is the—— A. May I add that during this whole period of—well, it is two years and a half, nearly—a great many of those men—I went over that list and found about 20 of them had only been in the office once in the two years and a half.

Q. Do most men who are hired rustle many, many times? A. As a rule, a man has to rustle from, oh, some of them rustle from two to three months—two weeks to three months, others, good miners, men who have good records and are capable, might get hired the second or third day; but rarely ever the first day does anyone get hired.

Q. Has there been any scarcity of a labor supply in this district for the last four years? A. None for longer than that, since before the depression.

Q. Mr. Bateman, have you, at my request, and in answer to the subpoena, checked the payroll records for the months of June and July, 1935? A. I have; yes, sir.

Q. Have you the result of your findings there? A. I have.

Q. Did you make this check personally? A. Yes, sir.

Q. I am referring now, Mr. Bateman, to the number of men on the payroll on the dates which I will suggest to you. Would you tell the Examiner how many persons were on the payroll of the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, on the 7th day of June, 1935? A. There were 941.

Q. Can you state how many persons were on the payroll on the 14th day of June, 1935? A. There were 917.

Q. Can you state, Mr. Bateman, how many persons were on the payroll on the 21st day of June, 1935? A. 952.

Q. Will you state, Mr. Bateman, how many persons were on the payroll on the 28th day of June, 1935? A. 986.

Q. Would you state, Mr. Bateman, how many persons were on the payroll on July 3, 1935? A. 996.

Q. Now, Mr. Bateman, referring to the number of men working on given dates, have you made a check of the payroll and your other records to determine that? A. Yes, sir.

Q. Before I ask you that, let me ask you, What was the last full working day prior to June 10, 1935? A. June 7th. The 8th was Saturday and the 9th was Sunday, and we were working on a five-day basis.

Q. How many persons were on the payroll on June 7, 1935, were actually working on June 7, 1935? A. 766.

Q. How many persons, Mr. Bateman, on the payroll on June 21, 1935, were actually working on June 21, 1935? A. 759.

Q. I will ask you, Mr. Bateman, how many persons were working on June 28, 1935? A. 766.

Q. How many persons were working on the third day of July, 1935? A. 808.

Q. Do the figures to which you have referred, with reference to the 21st, 28th of June, and July 3rd, include extra watchmen? A. They do not.

Mr. Persinger: Excuse me a moment. Off the record, Mr. Examiner.

Trial Examiner Kennedy: Off the record.

(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Mr. Bateman, can you tell us the number of men working on June 14, 1935? A. I furnished Mr. Persinger with a list of those, but I did not recapitulate that day.

Mr. Kitchel: I believe that is all, Mr. Examiner.

Trial Examiner Kennedy: Cross examination.

Mr. Kitchel: Take the witness.

Mr. Persinger: Could we have a few minutes' recess?

Trial Examiner Kennedy: We will take a five-minute recess.

You are instructed not to discuss the case with counsel unless both counsel are present.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: (After recess) The hearing will be in session.

Cross examination:

Q. (By Mr. Persinger) Mr. Bateman, referring to your meeting with Mr. Sharp in Morenci, will you tell us, as nearly as you can, exactly what was said by you and what was said by Mr. Sharp? A. As near as I remember, I said, "Hello, Bill, what are you doing here?"

Q. What did Mr. Sharp say? A. Nothing. I said, "Where did you come from?" He said, "I came up from the Banner," or "the Lovita,"—I don't remember which it was. One of the nearby mines there.

Q. What else was said? A. That is all I recall.

Q. You passed on then? A. I passed on.

Q. And on your way back what did you say, or, who opened the conversation on your way back? Did you speak first? A. I couldn't say; it was just a passing remark, because I was in a rush about something.

Q. Did you stop at all? A. No.

Q. Just kept on walking? A. Just kept on walking.

Q. And Mr. Sharp made no request for employment? A. No, none whatsoever.

Q. Did you make it a point, Mr. Bateman, to notice how

many pickets were on the line each day during the strike? A. No, I did not.

Q. Did you make it a point to notice how many pickets were on the line any particular day? A. No, I did not. You see, they only picketed—they picketed two shafts and one is about, I think, nearly a mile from where my office is.

Q. The other shaft entrance, the employees' entrance, would be visible from the porch of your office, would it not? A. Yes.

Q. But you never stood out there or walked up to the entrance and made a count of the pickets? A. No, I did not.

Q. Did you ever make any particular note of who was on the picket line on the occasions when you may have seen them? A. Yes, I did. I kept track of them.

Q. How did you do that? A. That is, roughly. Well, knowing who they were, watching them leave the line, and so forth.

Q. Did you personally keep track of them? A. Well, it was no duty of mine—no particular duty of mine. I simply did that to drop them from the payroll.

Q. Did you have anyone under you instructed to make an accurate check of who was on the picket line? A. I had no one under me at that time. I was in the office alone.

Q. You were the only person, then, who made any check for your office, at least, of who was on the picket lines? A. Yes.

Q. How did you make a check, or did you make a check, of who was on the picket line, say, at Campbell? A. No, I didn't make that; I didn't have any.

Q. You had no check of that? A. No.

Q. Your only check, then, was at the Junction shaft? A. Yes.

Q. Do you know if all the complainants in this case were on the Junction picket line, or substantially all of them? A. Well, I couldn't say offhand; I might check them and tell you.

Q. I believe I will ask you to do that. I am showing you the Appendix to the complaint. A. Of course, this would be conjectural. It is a long time ago.

Q. Yes. A. You couldn't expect it to be accurate. I will just check the names of those whom I have seen?

Q. You needn't read the names. Just give me a summary of how many of them, approximately. A. Yes. (Calculating) 23.

Q. 23. You think that is a reasonably accurate estimate? A. I am sure of those 23.

Q. Are you sure that the others were not on the Junction picket line at least most of the time? A. I didn't get you. There was a little disturbance here.

Trial Examiner Kennedy: Read the question, please.

(Whereupon the question was read by the Reporter as above recorded.)

A. Well, I wouldn't want to make that remark, I didn't make a daily check.

Q. Did you make any report to any officials, that is, to the general office, or any particular officials of the company on the activities of the picket line, any regular point? A. No, that wasn't my duty.

Q. Did you make any report to them on the persons whom you recognized on the picket line? A. No.

Q. The only records you made on that were the records on the employment cards? A. Yes. And may I add: All of those were not correct. I had to correct some of those.

Q. How did you go about— A. (Interrupting) There were some men laying off at that time whom we didn't know about, when they were dropped, and those corrections had to be made.

Q. How did you go about making those corrections? A. It was simply noted that they were not involved in the trouble.

Q. On June 13th, had you received any word from the general offices in Bisbee, or from any official of the company, as to what the company's policy would be, or at that time was, regarding the reinstatement of persons who had struck? A. I don't know exactly whether it was on the 13th or not, but——

Q. When, approximately, did you receive your first information as to what the company's policy regarding reinstatement of strikers was to be? A. Well, it was along sometime during the first week of the strike.

Q. And what was the information you received? A. To go slow on any of the men who had been on the picket lines. That is, to go into—May I correct that? That is, to go slow about reinstating any of the men who had been on the picket lines.

Q. Now, from whom did you receive—Was that an instruction? A. Yes. Well, it was in the way of an instruction, I presume.

Q. From whom did you receive that? A. Mr. Hodgson.

Q. Through any intermediary, or directly from him? A. Directly from him. He came into the office.

Q. Did he discuss with you at any time the possible reinstatement of any of the pickets, any of the strikers? A. No, he did not.

Q. Was that instruction which he gave you ever changed, to your knowledge? A. No, not to my knowledge.

Q. In other words, so far as you know, after the strike was over, that same instruction held good? A. So far as I know; yes, sir.

Q. And that instruction has remained good so long as you remained employment manager? A. It has.

Q. Now, referring to your check of the payroll for June and July, did you make reports on the number of men actively working on each day of the strike to the general offices, or to Mr. Hodgson, or to anyone else? A. No, I had nothing to do with that phase of the business.

Q. Who would have charge of making such reports, if they had been made? A. I presume the Chief Clerk.

Q. The Chief Clerk. Did you make any regular reports on the number of men you hired each day? A. Yes.

Q. To whom? A. To the general office.

Q. To any particular individual there? A. To the Paymaster. That is, I mailed it to the Paymaster.

Q. How long would you estimate it would take them to receive those reports after you sent them out? A. May I offer an explanation to that question?

Q. Certainly. A. You see, prior to the strike we had been hiring very, very few persons for approximately three years—from 1932 up to the depression. There were occasional fill-ins, and, therefore, we submitted what we call a 15-day report. Every 15 days we would submit a report showing the payroll changes, the entrances and terminations for that period, and placing the date of the transaction in front of the employee's name. Of course, now, when we are hiring regularly, it is the procedure to submit that report daily.

Q. That was the procedure during the strike? A. That was the procedure at the time of the strike.

Q. Was that put in immediately on June 10, the day the strike began? A. The 15th.

Q. June 15th? A. June 15th was the first report.

Q. Would you say that on June 15, 16, 17 and 18, that the general office was up-to-date on the number of employees that had been hired since the strike began, on each of those days? A. Well, figuratively so. The reports probably went in at intervals of two or three days then. We began to speed up after that. The reports had to go in so that the time cards could be mailed out to the various divisions.

Q. And you received definite instructions to keep them up-to-date? A. I don't think anybody instructed me. The matter was entirely in my hands.

Q. I see. Can you tell me how production in June compared with production in May? A. I could not. I get no production figures whatsoever.

Q. Who would be able to supply that? A. The Chief Clerk, I presume. He compiles the figures.

Q. You have stated that about 941 employees were employed on June 7th. At that time did you know if any of them belonged to the Union? A. Well, that's rather a broad question.

Q. That can be answered either yes or no, I think. A. I surmised that some did; I didn't know.

Q. Did you know any individuals whom you were aware did belong? A. Yes.

Q. About how many individuals did you know were members of the Union on June 7th? A. I could say I was probably sure of 20.

Q. How did you become aware of that? A. Well, they published their names in the papers as officers, and the dates of their elections, and the transactions of their own proceedings.

Q. Other than that, did you ever receive any information concerning who belonged to the Union? A. I did not.

Q. Did you ever request any such information? A. Never did, from anybody.

Q. I believe you have testified that on a number of occasions pickets in front of the employment office would heckle you and heckle the rustlers to some degree, is that correct? A. I did.

Q. Now, did that begin relatively early after the strike was called? A. Well, they were pretty orderly for a few days, as I recall, and it would vary; it went up and down. I think the worst day we have had was along about June 25th. There were several fights there that day, and I didn't see them, but I know they occurred.

Q. That heckling took place occasionally off and on? A. Yes.

Q. During most of the period of the strike? A. Oh, they would quiet down at times. I remember we had rather a quiet period of probably two weeks, one time. The boys stood around; I didn't say much; they were there; very well behaved; again, as I say, they got boisterous.

Q. Do you know if, prior to August 21st, there had been any conference between the management and the representatives of the Union concerning a possible settlement of the strike? A. I did not.

Q. You were present at no such conference? A. Not that I recall, no. I had nothing to do with that angle.

Q. How many men did you employ on August 21st?

Mr. Kitchel: If you know, Mr. Bateman.

A. 4.

Q. (By Mr. Persinger) 4? A. Well, I really employed 2, and 2 were re-checks, but 4 went on the payroll.

Q. Approximately on how many different days between June 10th and August 24th did you hire men? A. Oh, I could not tell you that accurately; between what dates?

Q. That would be the entire period of the strike. Were you hiring substantially during the day? A. All during June I hired almost every day except Saturdays. Then, by June 28th we had about completed filling the vacancies, and in August hiring was very intermittent, and in looking up the records yesterday, from August 21 to September 9, no one was hired. There was a period of nearly 18 days that nobody was hired, and then I hired one man. He went on, I think I still have the record in my pocket.

Q. In July? A. In July. I couldn't say exactly; I didn't look in July yesterday, and I haven't refreshed my mind.

Q. Now, do you remember exactly what took place each time you hired men during that entire period? A. Well, if there was anything unusual, I did.

Q. Was there anything outstanding on the 21st of August? A. Not as far as my recollection goes.

Q. Well, how do you fix that date? A. Well, I fixed it by having looked up the records yesterday and knowing that I hired these four men, I readily recall what transpired.

Q. Now, you also have records of having hired various numbers of men during a great many days in June, during a number of days in July. Do you remember exactly what happened on each occasion? A. Well, if the instance was cited to me I might recall it, but I certainly can't recall each day and make an attempt to tell you what happened. That would be absurd.

Q. And the instance of August 21st was cited to you? A. Yes, it was cited to me, and therefore I recall what happened.

Q. When did you cease your position as employment manager? A. August 6, 1937.

Q. At that time, Mr. Bateman, had there been any activity by the C.I.O. around the property of the company?

Mr. Kitchel: I object to that question, Mr. Examiner. August of this year, '37?

Mr. Persinger: Of '37.

Mr. Kitchel: I believe it is irrelevant; it has nothing to do with the period that is in question, 1935.

Mr. Persinger: Mr. Examiner, the theory of the Board has always been to show the continuing of unfair labor practices, and I intend to show that the policy adopted back in 1935 has been continued, with certain variations, up to the present time.

Mr. Kitchel: Does it——

Mr. Persinger: The policy of general interference.

Mr. Kitchel: Does counsel contend he has established such a policy prior to 1937?

Mr. Persinger: Oh, yes.

Mr. Kitchel: I hadn't caught it.

Trial Examiner Kennedy: The objection is overruled.

Q. (By Mr. Persinger) Was there any C.I.O. activity around the property of the company at or just prior to the time you changed your position from Employment Manager? A. Not to my knowledge.

Q. So far as you know, there had been no passing out of pamphlets or leaflets at the gate? A. Yes, I saw that.

Q. Had you ever received any notice as to what policy the company would adopt in respect to that activity? A. None whatsoever.

Q. And you never knew whether the company had adopted any policy in regard to that? A. I heard nothing about that whatsoever.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: I have no further questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Mr. Bateman, what is your present position with the company? A. Why, for ten weeks I was in Morenci standardizing the employment methods and procedure. Then I spent a month in Douglas, and for the last month I have been engaged in assembling such information and data as was required in the subpoena —that is, that part that pertained to employment statistics only.

Q. Do you now have any title at the present time? A. None whatsoever.

Q. How long did you say you had been with the Company? A. 27 years—that is, with both companies.

Q. With both companies? A. Yes; the C&A and Phelps Dodge.

Q. During that time, to your knowledge, have either of these companies had any contract with any labor organization? A. Not to my knowledge. It has always been an open-shop camp.

Q. That is the policy of the organization? A. I don't know that it is. That is what it has been, an open-shop camp.

Q. You are familiar with the men listed in Appendix A listed in the complaint? A. I am; yes, sir—that is, most of them.

Q. You know their names, and you have them in mind? A. I do.

Q. To your knowledge have any of them ever been requested by the respondent to apply for reinstatement since June, 1935? A. Not to my knowledge.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further. I do not believe we will have any need for this witness now, and I would like to have him permanently excused at this time.

Mr. Persinger: I have nothing further from this witness.

Trial Examiner Kennedy: You are permanently excused. You may remain in the courtroom, if you wish.

(Witness excused.)

Mr. Kitchel: Will you come forward, Mr. Kennaugh, please.

KOBEY KENNAUGH, a witness called by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Kobey Kennaugh.

Direct examination:

Q. (By Mr. Kitchel) Mr. Kennaugh, are you employed by the Phelps Dodge Corporation at the present time? A. Yes, sir; I am.

Q. How long have you worked for the company? A. I have worked for the Phelps Dodge Company since June, 1928.

Q. What is your present job with the company? A. I am a sampler for the Phelps Dodge.

Q. Does that work take you underground? A. Yes, sir.

Q. Is the major portion of your time spent underground? A. Yes, sir.

Q. Are you a member of any labor organization at the present time, Mr. Kennaugh? A. I am a member of the Employees' Association.

Q. Do you hold any office in that organization? A. I do.

Q. What office do you hold? A. Secretary.

Q. Can you state the qualification for membership in that organization? A. A man that is employed by the Phelps Dodge Corporation. Any employee is eligible for membership.

Q. Have you made a check recently from your records, from which you could tell us the present membership of that Association? A. I have.

Mr. Persinger: If the Examiner please, I do not quite get the purpose of this, and I do not offhand see its relevancy.

Trial Examiner Kennedy: Maybe you can explain what you are trying to prove.

Mr. Kitchel: At the outset of the hearing this morning, Mr. Examiner, we made a motion to dismiss upon the ground that the Board had absolutely failed to introduce any evidence showing that the failure to reinstate these men had caused or would tend to cause a labor dispute between the company and its employees. That motion was overruled. We therefore feel that the Examiner feels that there is some evidence to that effect in the record, so that the jurisdiction of the Board can be established. If there is

some evidence to that effect, we are now entitled then to show that this alleged failure to reinstate these men has not led to or tended to lead to any labor dispute between the company and its employees.

We expect to show it through this witness and others.

Trial Examiner Kennedy: What have the details of the Employees' Association got to do with that?

Mr. Kitchel: I merely asked him what the qualifications for membership was, and I am now about to ask him the number of members, leading up to the question of whether or not there is any dispute or failure to reinstate these men, which could tend to cause a dispute between the company and its employees.

Trial Examiner Kennedy: Well, I do not see the materiality of it. I will let you proceed, however, if you will strip it down.

Q. (By Mr. Kitchel) What is the present membership? A. 1,047.

Q. Are they all employees of the Phelps Dodge Corporation at the present time? A. Yes, sir; they are.

Q. Does that number include any persons employed in a supervisory capacity? A. No, sir; it does not.

Q. As Secretary of the Association, Mr. Kennaugh, were you served with a copy of the complaint in this case? A. I was.

Q. Have you read the list of the 48 names that appeared in that? A. I have.

Q. Has any association been engaged since 1935 in meeting and bargaining with the management on behalf of its members? A. There has.

Q. Has the Association at any time requested of the management that the management re-employ any of these 48 men? A. They have not.

Q. Has the failure of the company to re-employ any of these men ever led to a dispute between the Association and the company? A. Would you repeat that, please?

Q. Has the failure of the company to re-employ any of these, or all of these 48 men, ever led to a dispute between the Association and the company? A. It has not.

Trial Examiner Kennedy: Just a minute. Don't answer these questions until they are completed. Have you completed your question?

Mr. Kitchel: I asked you if it has ever led to a dispute between you and the company.

The Witness: It has not.

Trial Examiner Kennedy: Just a minute. I do not think that question is permissible, and I will not permit it to be answered.

Q. (By Mr. Kitchel) You have stated, I believe, that the Association has never requested the reemployment of these men? A. They have not.

Q. Has the matter of the reemployment of any of these men ever been discussed by the membership of the Association? A. It has.

Q. And what is the attitude of the membership of the Association on that proposition? A. The attitude of the membership is that no member of the Association will work with any of these men that walked out or strikers or pickets.

Q. And how many members of the Association did you state there were? A. 1,047.

Q. Has that attitude ever been expressed by the Association to the management? A. It has.

Q. You have stated that you are at present an employee of the Company? A. I am.

Q. Did you work through the strike period? A. I did.

Q. What is your attitude towards the employment of these men? A. I am the same as the members of the Asso-

ciation. I will refuse to work with any man that was on the picket line.

Q. In addition to your position as Secretary of the Association, Mr. Kennaugh, have you occasion to discuss this with individual employees? A. At Association meetings.

Q. Do you feel that you express the attitude and opinion of a number of employees? A. I do.

Q. Why did you state that you will refuse to work with these men? A. Any man that will give the abuse that these men gave to the men that were going through those gates to make their daily living, or any man that will work with a man that will take a rifle and shoot through a car window or blast cars, such as happened, or take little children and take them onto the picket lines and let them hear the profanity those children heard, I do not feel, speaking on behalf of the Association, that I or they can work with these men.

Q. Would you be willing to work with a man with whom you could not cooperate underground? A. I would not.

Q. Why do you state that? A. As any member or any miner knows, you have to put trust in your partner. There is a possibility that your partner could cause an accident which would be classed as an accident and it would really be your partner's fault.

Mr. Kitchel: I believe that is all. Take the witness.

Cross examination:

Q. (By Mr. Persinger) Mr. Kennaugh, when certain representatives of the Association requested the management not to re-employ the strikers, what reply did the management make? A. At first, August, 1935, the management did not say yes or no, as given in the minutes of that meeting.

Q. And since that time— A. (Interrupting) They have not given any.

Q. Do you know if there have been any hard feelings between the members of the Employees' Association and

the members of the union prior to the strike? A. There was no ill feeling until the members of the union endeavored to break up meetings of the Association held in the Eagle Hall.

Q. That doesn't answer my question, because I don't know the dates. A. The first meeting was November 15, 1934.

Q. Then prior to the strike there had been ill feeling between the two groups? A. There had been.

Mr. Persinger: No further questions.

Mr. Kitchel: No further questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When was the Association formed? A. The Association's first meeting was November 15, 1934.

Q. Did you state that the foremen belonged to the Association? A. No, no supervisory capacity.

Q. Were you one of the charter members? A. Yes, sir.

Q. How did the Association happen to be formed? A. The men got together for self-protection and formed this Employees' Association.

Q. What do you mean, "self-protection"? A. For working conditions and to secure a collective bargaining agency with the management.

Q. Who suggested the Association? A. John Kraetz, the first President.

Q. Who is he? A. He was the first President of the organization.

Q. Well, is he an employee? A. He is an employee; he is a foreman now.

Q. He is a foreman? A. He is a foreman now.

Q. Now, do I understand that your association will call a strike if necessary? A. They will.

Q. Have they ever done so? A. No, sir.

Q. What would be the basis for calling a strike? A. Reemploying and reinstatement of these men.

Q. That is the only reason they would go on strike? A. That is the only reason they would go on strike.

Q. Is that the only one? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: In order to clear up the record a little bit, I think I should ask one or two further questions.

Cross examination (Cont'd):

Q. (By Mr. Persinger) In July, 1934, about the 18th, there was an election held here, was there not, under the auspices of the old Regional Labor Board? A. Yes, sir.

Q. Do you know between what two groups that election was held? A. I do not.

Q. Were you here at that time? A. I was.

Q. Did you vote in that election? A. Yes, sir.

Q. Don't you know what two groups you voted for and against? A. I couldn't say offhand.

Q. Wasn't one an employee-representation plan, and the other the Bisbee Miners' Union, Local No. 30? A. I couldn't say, sir.

Q. Do you remember how the election came out? A. It was very close.

Q. Do you remember who won it? A. By the count of the votes, the representation plan won out.

Q. Didn't the Regional Labor Board certify the union as the winner of the election? A. They did not, as far as I know. I did not hear.

Q. You never heard of that? A. The last I heard, it was in controversy.

Q. And how long after that election was held was it that the Employees' Association was organized? A. The Association was organized in November, 1934.

Q. Did it have any different membership from that of the old Employee-representation plan? A. It did.

Q. To what extent? A. The representatives were elected by the men at that time.

Q. I mean the membership, the group membership? A. No, it was that every man taken in was a new member. The old representation plan was not.

Q. But were not all of the employees, substantially, who were members of the old plan taken into the Employees' Association? A. No, sir. They had to make application again.

Q. Yes, but they were taken in, were they not? A. If they were accepted by the representatives' Executive Board.

Q. You said the vote at that election was close. Do you remember approximately what percentage of the total number of employees voted? A. I do not.

Q. Do you know whether a great number voted? A. I do not. I was not on the executive Board at that time.

Q. You don't remember much about that election? A. No, sir.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: I have two questions to ask.

Redirect examination:

Q. (By Mr. Kitchel) Was Mr. Kraetz, to whom you have referred, a foreman in 1934? A. No, sir; he was not.

Q. Was he employed in any supervisory capacity? A. No, sir.

Q. At that time? A. No, sir.

Q. Mr. Kennaugh, was there any such thing as membership in the Employees' Representation Plan? A. There was no such thing as Employees' Association at that time, and any man that filed out a card for the old employees' representation was considered not in the new organization.

Mr. Persinger: I did not understand that. Will you read that, Mr. Reporter?

(The answer referred to was read by the Reporter, as set forth above.)

The Witness: They were not accepted, in other words, in the new organization.

Mr. Persinger: Will counsel clear that up? I do not understand the answer.

Mr. Kitchel: May we have this off the record a minute?

Trial Examiner Kennedy: No, keep it on the record. Ask him another question.

Mr. Kitchel: Maybe I had better ask the question again.

Q. Under the old representation plan was there any such thing as membership in the plan? A. No, there was not.

Mr. Kitchel: That is all.

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Does your Association have regular dues? A. Yes, sir; they do.

Q. Do you have any strike benefits fund? A. No, sir; we do not.

Q. Do you have any contract with the company? A. We have a working agreement with the company—a collective bargaining agreement.

Q. You do? A. Yes, sir.

Q. Of what does that consist? A. That we are the collective bargaining agent at the present time, and that this contract can be terminated within 30 days by either side.

Q. Is it a closed-shop contract? A. No, sir; it is not.

Q. Have you ever applied to the National Labor Relations Board for certification as the bargaining representative? A. Not since I have been Secretary.

Trial Examiner Kennedy: Anything further?

Recross examination:

Q. (By Mr. Persinger) Is there any provision in that contract concerning strikes? A. No, sir; there is not.

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: Is it about time for recess, Mr. Examiner?

Trial Examiner Kennedy: Yes, just about. We will be in recess until 1:30.

Off the record.

(Remarks outside the record.)

(Thereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m. of the same date.)

AFTER RECESS.

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, I should like to read into the record the name, dates worked, appearing on a list of employees used as watchmen from June 10 to June 30, 1935, the list having been supplied by respondent in answer to the subpoena. It is the name of Kobey Kennaugh, employed as a watchman June 10, 11 and 30.

Mr. Kitchel: It has now been read into the record, apparently. We object to it upon the grounds it is irrelevant and incompetent, and has no bearing on the issues of this case.

Trial Examiner Kennedy: What is the point, Mr. Persinger?

Mr. Persinger: Mr. Kennaugh has taken the stand and shown considerable antagonism to the Union, and I merely want to show that he was used as a watchman, the term generally used to cover all guard duty during the strike.

Trial Examiner Kennedy: Mr. Kennaugh?

Mr. Persinger: He was the Secretary of the Employees' Association.

Trial Examiner Kennedy: He was the last witness?

Mr. Persinger: Yes.

Mr. Kitchel: It seems to me that counsel is just making an assumption that is not justified by any facts at all. That the man is hostile to unions and was used as a guard for that purpose—I suppose that is what he is attempting to establish.

Mr. Persinger: Oh, no; no; merely that he was used as a guard, is now hostile to the Union, and is Secretary of the Employees' Association.

Trial Examiner Kennedy: There is not any dispute about the fact that he was a guard?

Mr. Kitchel: What is the title of that list? "Guard" or "Watchman"?

Mr. Persinger: "Watchman."

Mr. Kitchel: No dispute that he was used as a watchman, but I cannot see that that has any bearing on this.

Trial Examiner Kennedy: Well, the stipulation that the witness was a watchman at the time stated by Board's counsel will be received in evidence, and that is all that will be received.

Mr. Persinger: If the Examiner please, I have gone through the previous transcript and have made the following analysis of the testimony as given by Mr. Dougherty:

That he was last employed in 1934;

That during the period of the strike he was in the town of Bisbee, but not on the picket line;

That he applied for work in January, 1937;

That at that time Mr. Bateman said, "If there is any opening at the Cole, I'll send you over there;"

That about January 15, 1937, Mr. Dougherty was in the rustling line outside the office;

That Mr. Bateman called him into the office;

That he was sent to the doctor for physical examination, and later to the dispensary to be X-rayed. At the dispensary he was told to return to the Employment Office the next day;

That the next day he returned and spoke to Mr. Bateman;

That Mr. Bateman said, "I can't send you out there; some men said you called them 'scabs,' and I want no trouble;

That Dougherty left at that time and returned a few days later and asked Mr. Bateman, who had said that he had called them 'scabs';

That Mr. Bateman replied, "I don't think I have to tell you that."

That Mr. Dougherty said, "I was not on the picket line."

That Mr. Bateman said, "There is no use for your coming on for more work."

On cross examination was brought out the details of his previous employment record;

That he was not a Union member, and during most of 1934, or any of 1935, he had not attended the meetings of the Union other than the meeting at which he joined, and no other meetings;

That he was not on the picket line;

That he denied, under questioning, that he had been rejected by the examining physician, and stated

that since October 15, 1934, when his employment with respondent ceased, he has had only WPA work.

That is the record of the testimony of Mr. Dougherty.

Trial Examiner Kennedy: What is your position on the motion of counsel for the respondent to dismiss as to Mr. Dougherty?

Mr. Persinger: On the testimony of Mr. Dougherty, there is evidence that he was refused employment solely because some men said that he had called them "scabs". Whether or not he was actually on the picket line, or whether Mr. Bateman knew that he was on the picket line, is not shown in that testimony. From the statement by Mr. Bateman that he couldn't employ him because he had called some men "scabs," it is necessary to presume that Mr. Bateman assumed that he was active during the strike, and turned him down for that reason.

There has been further testimony, of course, since the respondent's case began.

Trial Examiner Kennedy: Well, I am not considering that.

Mr. Persinger: On the record of Mr. Dougherty, I think there is evidence that he was refused reinstatement because of assumed activities during the strike.

Trial Examiner Kennedy: Well, it is my feeling that the testimony as to Mr. Dougherty is very weak. I will reserve ruling until the respondent's case has been completed.

Mr. Persinger: The testimony of Richard Johnson was to the effect that he had never worked at any time for the respondent; that he applied for work frequently during the months of January, February and March, 1936; that his father and brother were formerly employees of the respondent; that in January he spoke with Mr. Bateman and Mr. Bateman told

him that his father and brother were not in good standing with the company, and there would be no chance of Richard Johnson obtaining employment.

He continued to rustle for three months. He spoke to Mr. Bateman in March. At that time Mr. Bateman said, "I thought we had this out once before." Johnson replied, "I thought maybe if I kept rustling there would be a chance. I have never worked here."

Mr. Bateman said, "There is no chance."

Mr. Johnson is now employed at the Shattuck Denn, and was first employed there on April 9, 1936; he did not belong to the union until he was employed at the Shattuck Denn, and he took no part in the strike because he was not even in town during the strike.

I think, on the strength of that evidence, of the statements of Mr. Bateman, that he could not employ him, would not employ him, because his brother and his father were not in good standing with the company, is sufficient to deny the motion to dismiss.

Trial Examiner Kennedy: That is Richard Johnson?

Mr. Persinger: That is Richard Johnson.

Trial Examiner Kennedy: He has never been employed by the respondent?

Mr. Persinger: At no time.

Trial Examiner Kennedy: Was your position on the point that never having been an employee the Board is estopped from giving him any relief?

Mr. Persinger: The Board is estopped from giving any relief, but not from issuing a cease and desist order to employ him later.

Trial Examiner Kennedy: The motion will be denied as to Richard Johnson.

Proceed.

T. J. Rescola—For Respondent—Direct.

T. J. RESCOLA, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: T. J. Rescola.

Direct examination:

Q. (By Mr. Evans) Are you an employee of the Phelps Dodge Corporation at the present time, Mr. Rescola? A. Yes, sir.

Q. Where are you employed? A. Campbell shaft.

Q. Were you an employee during the year 1935? A. Yes, sir.

Q. Where were you employed at that time? A. Campbell shaft.

Q. Did you work during the period of the walk-out and picketing? A. Yes, sir.

Q. In that year? A. Yes, sir.

Q. I will ask you, Mr. Rescola, if any of the men who were on the picket line or walked out in June, 1935, were put back to work, would you have been willing to work with them? A. No, sir.

Q. Why not? A. Because they abused us too much on the line.

Q. Any other reason? A. Yes, sir.

Q. What other reasons, if any? A. Well, because I don't think they would be safe to work with.

Q. Can you state what the attitude of the other employees working for the company at the present time is with respect to working there with these men? A. They say they will not work with them.

Q. And how do you know that to be their attitude? A. Because I meet the men up and down the shaft and I hear them talking.

Q. You do what all the time? A. I meet the men up and down the shaft all the time, and I hear the men talking.

Q. And has the failure on the part of the company to employ any of the men who walked out in June, 1935, or who were on the picket line, led or tended to lead to any dispute between the company and its employees?

Mr. Persinger: Just a moment. I object to the question on the ground that it is immaterial and calls for the conclusion of the law from this witness.

Trial Examiner Kennedy: Yes, it will be sustained on that ground.

Mr. Evans: If the Examiner please, it is our position that this witness, as well as other witnesses whom we are ready to produce, may testify as to whether any dispute existed, or might exist, between the company and the employees over the question of hiring these men.

Under the provisions of the Act the Board has jurisdiction to prevent any alleged unfair labor practice which might affect commerce, and under the provisions of the Act the term "affecting commerce" is defined as leading or tending to lead to a labor dispute which might affect commerce.

Now, this witness, as well as others whom we are in a position to produce, may certainly testify as to whether the employees of the company have any dispute with the management over the employment of these men, or whether it would tend to lead to a dispute.

Trial Examiner Kennedy: Just a minute, counsel. I don't think you need to argue this thing extensively. The objection is made, as I understand it, to the use of the term "labor dispute," which is a term used in the Act, and that this witness has not been qualified to give us an expert opinion on whether or not that situation has arisen.

Mr. Persinger: If the Examiner please, there is a second point. Who are the employees of the company at this time is what the whole case is about, really, and certainly this witness can't answer the question.

Trial Examiner Kennedy: Well, I sustained the objection on the ground this witness is not qualified to give us his opinion on that point.

Mr. Evans: In that connection, Mr. Examiner, I point out that I did not ask the witness whether it would tend to lead to any labor dispute.

Trial Examiner Kennedy: Read the question, please, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: I think that calls for the conclusion. You can establish facts by a witness of this type; but in using that term "dispute," in my opinion, it would be asking him for a conclusion under the terms of the Act.

Q. Well, Mr. Rescola, have you or any of the employees who are now working for the company, ever sought to have the men who were on the picket line re-employed by the company? A. I don't just get what you are talking about.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: No, sir.

Trial Examiner Kennedy: Speak out your answer.

The Witness: No, sir.

Q. (By Mr. Evans) Would you object to their being re-employed? A. Yes, sir.

Q. Can you state whether or not that is the attitude of the employees who are now working for the company? A. Yes, sir, that is.

Q. Can you state whether or not if the company put these men back to work, a dispute or controversy would be apt to exist between the men now working for the company and the company regarding their reinstatement? A. Yes, sir.

Mr. Persinger: I object to that wording, Mr. Examiner.

Trial Examiner Kennedy: Yes. The objection is sustained. The answer will be stricken. Don't answer these questions until you give counsel an opportunity to object.

Mr. Evans: Mr. Trial Examiner, the word——

Trial Examiner Kennedy: Now, counsel, we are not arguing all of these rulings. You automatically get your exception. Now, let's proceed.

Mr. Evans: That is all, Mr. Examiner.

Trial Examiner Kennedy: Cross examine.

Mr. Persinger: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Did you ever belong to a union? A. Yes, sir.

Q. What union? A. Bisbee No. 30, International Union of Mine, Mill and Smelter Workers.

Q. When did you join that union? A. Oh, I would say 1934.

Q. Are you still a member of it? A. No, sir.

Q. When did you drop out? A. The same year that I joined.

Q. A little louder; I didn't hear that. A. The same year that I joined.

Q. 1934? A. Yes, sir.

Q. Have you belonged to a union since that time? A. No, sir; the representative plan.

Q. You are in that? A. Yes.

Q. Are you in any such organization now? A. I am a representative of the employees.

Q. Do you consider that a union? A. Yes, sir.

Q. You said that you were afraid, or, that you didn't want abuse, or something of that sort. Will you tell me what you mean by that? A. What do you mean?

Q. You used the term "abuse," in regard to these men who went on strike. A. Well, we were going down there; instead of asking us to come with them they demanded us to come with them.

Q. Where was this? A. At the strike down there.

Q. When? A. During the strike of 1935.

Q. What do you mean by that, "they demanded you"? A. Instead of asking us, they demanded us to come.

Q. I don't understand what you mean by "come"? A. Well, to come out with them.

Q. Oh,—to go out on strike? A. Yes.

Q. And you consider that abusive? A. I think if they had talked like we were white people instead of "yellow dogs," like they called us, we might have considered them more; but they used all profane language and "yellow dogs," and things like that, and that's what I call "abuse."

Q. Were those remarks addressed to you personally? A. Yes, sir; they were.

Q. By whom? A. By the whole bunch. I could pick out two or three.

Q. The whole crowd? A. Yes, sir.

Q. How often? A. Oh, every day, twice a day, for five days a week.

Q. For how long? A. For two months, two weeks and two days.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: No questions.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Evans: Mr. Cunningham. Will you take the stand, please.

H. L. CUNNINGHAM, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please?

The Witness: H. L. Cunningham.

Direct examination:

Q. (By Mr. Evans) Are you employed by Phelps Dodge Corporation at the present time, Mr. Cunningham? A. I am.

Q. Where are you employed? A. At the Campbell shaft.

Q. What as? A. At the present time I am tap lagging.

Q. Were you employed during the year 1935? A. I was.

Q. Where at? A. The Campbell shaft.

Q. What was your job at that time? A. I was caging at that time.

Q. Did you work during the period of the walkout and picketing? A. I did.

Q. Mr. Cunningham, if any of the men who walked out in June, 1935, or were on the picket line during that period, had been put back to work, or were put back to work, what would your attitude be with respect to working with them? A. I would refuse to work with them.

Q. Why? A. Because they refused to work with us, and we consider they are not safe to work with. The attitude they showed toward us during the trouble——

Q. What attitude do you refer to? A. By abusing us; calling us names that I don't care to mention; hollering and carrying on with us, threatening us.

Q. Anything else? A. Well, I was stopped one night, supposed to get a licking, but I stopped it.

Q. Who stopped you? A. Well, the law, apprehended at the end of the trouble, had taken charge of it themselves.

Q. Any other reason why you wouldn't want to work with these men? A. Well, none in particular that I know of.

Q. Do you know what the attitude of the rest of the men now employed by the company is in this respect? A. Well, the men that I work with daily have the same attitude towards them that I do.

Q. Do you know why they have that attitude? A. Well, for the same reason that I give myself.

Q. Have you or the men that you work with ever requested the company to put these men back to work? A. No, we haven't.

Q. Has the failure of the company to put them back to work occasioned any controversy with the men now working?

Mr. Persinger: I object to that, Mr. Examiner, as calling for a conclusion.

Trial Examiner Kennedy: Sustained.

Q. (By Mr. Evans) Would a controversy develop between the company and the men now working if these men were put back to work, in your opinion? A. It would.

Mr. Persinger: I object upon the same grounds.

Trial Examiner Kennedy: Sustained. The answer will be stricken.

Don't answer until you give counsel an opportunity to object.

The Witness: All right, sir.

Q. (By Mr. Evans) What would the attitude of the men be if these men were put back to work?

Mr. Persinger: That clearly calls for a conclusion. I object to it.

Trial Examiner Kennedy: Well, you may limit that to what his attitude would be.

Mr. Evans: Mr. Examiner, if we have to put on all of the men now in the employ of the company, we will do so. Here is a man who is working with them. We are attempting just to put on a cross-section of the men, with the idea of expediting the hearing.

Trial Examiner Kennedy: Allow me to suggest, counsel, if you have more cumulative evidence, that you offer to prove by so many witnesses the same testimony, or substantially the same, as this witness has testified to, and get that in the record that way. I am certainly not going to favor a whole parade of witnesses just to testify to that fact.

Mr. Evans: Well, I concur heartily with the view of the Examiner on that.

Q. What would your attitude be if these men were to be put back to work? A. Well, my attitude would be that there would be trouble.

Mr. Evans: You may take the witness.

Cross examination:

Q. (By Mr. Persinger) Mr. Cunningham, have you been in the courtroom at any time during this proceeding? A. Well, I was in here Monday afternoon just after court taken up, and then I heard Mr. Jack Fisher's testimony, and then I had to go and prepare myself for night shift.

Q. What was your job during the time of the strike? A. When the strike taken place?

Q. During the time that there was a picket line. A. Well, I was put on guard duty.

Mr. Persinger: That is all.

Redirect examination:

Q. (By Mr. Evans) How many days were you on watching or guard duty? A. It was either 10 days or two weeks, I don't remember just which.

Q. And where was that? A. At the Campbell shaft.

Q. And were you also working at that time underground? A. I was, yes.

Q. What did your guard duties consist of? A. Two hours in the morning and two hours in the afternoon when they changed shifts, and two hours in the evening when the night shift went on.

Mr. Evans: That is all.

Recross examination:

Q. (By Mr. Persinger) Did you carry any arms? A. I did, on the job.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: No.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Have you been subject to any abuse since the strike by any of the strikers? A. Since the strike has been ended?

Q. Yes. A. No.

Q. Have you ever gone through a strike before? A. No, but I was raised around quite a bit of labor trouble in the coal fields in the State of Kentucky.

Q. To your knowledge, does a certain amount of ill feeling result during a strike? A. Well, more or less, yes.

Q. And after the strike is over, those feelings cool down a little bit, don't they? A. Quite a bit, yes.

Q. Now, you say if these men were returned to work, you would be looking for trouble, is that what you said? A. Well, yes, there would be trouble.

Q. Why would there be trouble? A. Well, because we don't intend to take what we took once before.

Q. What do you mean by that? A. I don't intend to be abused as we was once before on labor trouble of that kind.

Q. What makes you think you would be abused again? A. Well, if we were to have a strike, we would be.

Q. Well, if there was no strike? A. Well, our organization would just absolutely refuse to work with them if they were put back to work.

Q. What would your organization do? A. We would come out on a strike ourselves.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

HOMER BRINKMAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Homer Brinkman.

Direct examination:

Q. (By Mr. Evans) What is your name? A. Homer Brinkman.

Q. You are employed by the Phelps Dodge Corporation at the present time? A. Yes, sir.

Q. Where are you employed? A. At the Campbell shaft, Division B.

Q. Were you employed there during the year 1935? A. Yes, sir.

Q. And did you work during the period of the walk-out and picketing? A. Yes, sir.

Q. That occurred at that time? A. Yes, sir.

Q. Mr. Brinkman, if the men who were on the picket line and walked out at that time were put back to work, what would your attitude be with respect to working with them? A. There would be no working with them?

Q. And why do you feel that way? A. I wouldn't trust them.

Q. Why wouldn't you trust them? A. It wouldn't be safe.

Q. Why do you say you wouldn't trust them, Mr. Brinkman? A. Would you like to go through a picket line and be called everything but your name?

Trial Examiner Kennedy: Now, Mr. Witness, you are not here to ask questions. You answer the questions.

Do you understand that?

The Witness: I beg your pardon.

Trial Examiner Kennedy: The statement is stricken from the record. Read the question, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: It was because it wouldn't be safe to work with them.

Q. (By Mr. Evans) Well, now, Mr. Brinkman, I want to find out why you feel that way. Why do you think it wouldn't be safe to work with them? What, if anything, has caused you to think that? A. Because I wasn't on their side. I opposed their views of things, conditions, working conditions, and so forth.

Q. Anything else that caused you to feel that way toward them? A. Yes.

Q. What, if anything? A. Being threatened, being called vile names and so forth, if you know what I mean.

Q. Were you ever threatened by any of these men who walked out or were on the picket line? A. I was chased about 10 miles by some of them.

Q. When did that happen? A. Well, I couldn't say the date, but it was shortly after the strike was called.

Q. Now, you say that one of the reasons you wouldn't want to work with them was because of the abuse. What do you mean by that—by "abuse"? A. Well, I wouldn't feel safe to work under them.

Q. No, I am asking you what you mean by "abuse." You say you were subjected to abuse at their hands. A. Well, I was abused by, you might say, going through their lines, being called different names. That is in the nature of abuse.

Q. And what were you called? A. I was called a yellow dog, a rat and a frog son-of-a-bitch.

Q. Did that occur frequently during the period of the walkout? A. Oh, I don't know. I couldn't memorize the times, but often enough.

Q. If you know, can you state what the attitude of the other men working at the present time is as to working with the men who walked out or were on the picket line? A. Well, to those that I have talked to, and have been working with, they have the same attitude towards them as I have.

Q. And do you know why they have that attitude? A. I didn't hear them express themselves, only the same as I am.

Q. What would your attitude be if these men were put back to work? A. There wouldn't be any work.

Q. What do you mean by that? A. Well, I wouldn't work with them.

Mr. Evans: You may take the witness.

Cross examination:

Q. (By Mr. Persinger) Mr. Brinkman, who asked you to come up here today and testify? A. Nobody asked me; I was informed to call at Mr. Henrie's office.

Q. Who told you? A. Then I was told to come up here at 1:00 o'clock.

Q. Who told you to call at Mr. Henrie's office? A. My foreman.

Q. And who told you to come up here at 1:30? A. Mr. Evans.

Q. Have you talked over with anyone the testimony you were to give on the stand? A. No, sir; that is—what do you mean?

Q. Well, of course, you have talked to Mr. Evans, but have you talked to anyone else? A. No, sir.

Q. Did you talk to Mr. Henrie? A. No, sir.

Q. Or to your foreman? A. No, sir.

Q. How did your foreman find out that you had anything to say that would have any bearing on this case? A. No, sir.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: How did he find out? Well, I worked during the trouble, that is how he probably knew.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: Now, counsel, can't you stipulate as to any further cumulative evidence?

Mr. Persinger: I have already offered to stipulate, although we haven't settled it definitely.

Mr. Evans: May we have about a five-minute recess?

Trial Examiner Kennedy: Yes. I don't care to hear much more of this cumulative evidence. I will take it for granted that other witnesses would testify the same as these men have along that line. I don't

see that the record is being helped by any more cumulative evidence.

Mr. Evans: Yes, it is all cumulative.

Trial Examiner Kennedy: I beg your pardon?

Mr. Evans: It is all cumulative.

Trial Examiner Kennedy: Yes. Let us recess for 10 minutes and see if we cannot get some understanding about that.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Evans: Mr. Alexander, will you take the stand, please.

G. G. ALEXANDER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your name, please.

The Witness: G. G. Alexander.

Direct examination:

Q. (By Mr. Evans) Are you employed by Phelps Dodge Corporation at the present time, Mr. Alexander? A. Yes, sir.

Q. Where are you employed? A. At the Campbell shaft.

Q. Were you employed at the Campbell shaft during the period of the walkout and picketing? A. I was.

Q. What is your attitude with respect to working with the men who went out on strike and who were on the picket line? A. I don't think we could cooperate.

Q. What do you mean by that? A. Get along.

Q. Do you usually work with others underground? A. Your partner, yes; sometimes three or more.

Q. Is it necessary that you get along underground and cooperate on the job? A. Absolutely.

Q. Why? A. Well, to make a showing, and do your work proper, and make it easier on yourself, as well as your partner, you have to work together and cooperate to get anywhere.

Q. Why do you say that you do not think you would be able to cooperate or work with them? A. Well, during the strike we were called a good many dirty names, and we were requested to let them pass, not to talk back, not to cause any trouble.

Q. What is the attitude of the other men on the job towards these fellows? A. As far as I know, it is the same as mine—that is, the old ones that went through the strike. The new fellows that was hired after the strike, I couldn't say.

Q. Have you or any of the men you have ever worked with, ever requested that these men be put back to work? A. Absolutely not.

Q. Do you want them put back to work? A. No, sir.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Just a minute.

Cross examination:

Q. (By Mr. Persinger) Mr. Alexander, what is your job at the present time? A. Timberman.

Q. Timberman? A. Yes.

Q. And how many men do you work with? A. Sometimes only one, sometimes three or four.

Q. And during the course of a day's work, do you come in contact with men doing other jobs in the mine? A. Well, more or less.

Q. Would you have to be able to cooperate with them when you are not working with them, just see them occasionally? A. Well, yes.

Q. Why? A. Well, you couldn't have ill feelings underground. You don't have to cooperate with them if you are not working with them. You could go off somewhere and leave them alone, but it is best to have perfect agreement underground.

Q. What shaft do you work in? A. Campbell shaft.

Q. Is every man in the Campbell shaft a personal friend of yours? A. Yes, I look at them that way.

Q. There is no man in the shaft that you don't like? A. I haven't an ill feeling towards any man, I am glad to say.

Q. Have you been in the hearing room at any time during the course of this proceeding? A. Yes.

Q. When? A. Monday and Tuesday afternoons.

Q. Afternoons in both cases? A. Yes, for a very short time.

Q. About how long a time? A. An hour.

Q. Do you remember whose testimony you heard? A. I was here when Pete Cornett and Bethel gave their testimony.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Evans: Nothing further.

Examination by The Trial Examiner:

Q. (By Trial Examiner Kennedy) There are about a thousand men working in that mine at the present time, aren't there? A. Not at the Campbell shaft.

Q. How many are working at the Campbell shaft? A. I will say approximately 300 full shifts.

Q. You don't have any ill feeling toward any of these men? A. No, I don't.

Q. Do you think you are a hard man to get along with? A. Very easy.

Q. Very easy? A. Yes.

Q. Do you make it a practice to hold grudges against men? A. I try not to.

Q. Don't you think two years is a long time to hold a grudge? A. Not under the circumstances.

Q. You don't? A. No, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Evans: Mr. Trial Examiner, with the consent of counsel for the Board, we wish to stipulate, for the purpose of avoiding more or less repetition of testimony, that we would proceed, if necessary, to put on testimony of some seven or eight hundred men now employed by the Phelps Dodge Corporation substantially to the effect of the testimony given by the witnesses called since the noon recess. That would be to the general effect that they do not want to work with these men who went out on the strike in June of 1935, or were on the picket line, because of the abuse, threats, and general ill feeling that was engendered at that time, and because they do not feel it either safe or desirable to work with them in the occupations in which they were engaged.

In some cases, for the further reason that they do not feel that they would be able to cooperate with them on the job, obtain the necessary cooperation which is required underground where men are working together; and further, that that expresses the attitude generally of the men in the employ of the Phelps Dodge Corporation at the present time, that

they have not requested the management to reinstate any of these men or employ them, and are not desirous that they do be employed.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: Is it my understanding that all of those witnesses, if called, would be presently employed by the Phelps Dodge Corporation?

Mr. Evans: That is correct.

Trial Examiner Kennedy: And none of them would belong to the union of which the complaining witnesses belong?

Mr. Evans: At the present time. Many of them, I think, at one time or another were members of that union.

Trial Examiner Kennedy: But are not now.

That stipulation is received.

The hearing will be in recess until 7:00 o'clock this evening.

(Thereupon, at 2:30 o'clock p. m., a recess was taken until 7:00 o'clock p. m. of the same date.)

AFTER RECESS.

(The hearing was resumed, pursuant to recess, at 7:00 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Kitchel: Mr. Examiner, counsel has agreed to stipulate that the Inspiration Mining Company which has been referred to in the testimony in this case during the past year produced the second largest amount of copper of any of the operating mines in this state and, in addition, that the rate of pay of the Inspiration Mine follows the same lines as that of the Copper Queen Branch, Mines Division, of the respondent.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: All spectators understand the rule, that if you are in the room while the others are testifying you will not be permitted to testify.

CY CORNETT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Cy Cornett.

Direct examination:

Q. (By Mr. Kitchel) Mr. Cornett, are you at present employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Have you ever been employed by the Sunshine Mining Company? A. Yes, sir.

Q. And where is that located, Mr. Cornett? A. At Kellogg, Idaho.

Q. What was the last period of time during which you were employed at the Sunshine Mining Company? A. I don't remember just the exact date, but it was '27 some time when I left.

Q. In '27? A. Yes.

Q. Or '37? A. '37, rather.

Q. And how long were you employed before you left Kellogg? A. About 18 months.

Q. What job did you have with the Sunshine Mining Company? A. I was a jigger boss in a shaft, the Jewel shaft.

Q. Are you more or less familiar with underground conditions? A. I never worked underground. I worked in the shaft all the time I was there.

Q. Are you acquainted with the type of mining that is engaged in at that mine? A. Yes.

Q. How many employees were there at the Sunshine Mining Company—I will ask you to give only a rough estimate—at the time you were employed there? A. I would say, somewhere between 400 and 600.

Q. Do you know whether or not since that time that number has increased? A. I wouldn't know since I left.

Q. What was the rate of pay there for a miner at the time you were working at the Sunshine? A. If I remember right, it was $5.75.

Q. Are you familiar with the type of work done by miners and muckers in the mines here with the Phelps Dodge Corporation? A. I am.

Q. Would you say that that type of work is the same as that done by the men at the Sunshine Mining Company? A. Yes.

Q. Is the Sunshine Mining Company a substantially large producer? A. I understand that it is one of the largest producers in the United States.

Mr. Kitchel: That is all.

Cross examination:

Q. (By Mr. Persinger) Mr. Cornett, was the rate of pay for miners $5.75 when you first went to the Sunshine? A. I went to work in the shaft when I first went up there, and I went to work at $6.20, and I don't know exactly what the miners' pay were. That is merely an estimate.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Where are you now employed? A. Pardon me?

Q. Where are you now employed? A. At the Sac shaft, for the Queen.

Q. The Phelps Dodge Corporation? A. Yes.

Q. Do you belong to the union? A. No.

Trial Examiner Kennedy: That is all.

You are excused.

(Witness excused.)

Mr. Kitchel: Mr. Bambrick, will you come forward, please?

HEBER BAMBRICK, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Heber Bambrick.

Direct examination:

Q. (By Mr. Kitchel) Mr. Bambrick, are you employed at the present time by the Phelps Dodge Corporation? A. I am.

Q. Have you ever been employed at the Climax Molybdenum Mine? A. I was.

Q. Where is that located? A. At Climax, Colorado, 13 miles north of Leadville.

Q. How long ago did you work there? A. I left there in November the 1st, this last year.

Q. Of 1937? A. Right.

Q. How long were you there, Mr. Bambrick? A. I went in there in November, 1936.

Q. What was your job with the Climax Molybdenum Company? A. Junior Engineer underground.

Q. Was the major portion of your working time spent underground? A. Until February, 1937, yes, all the time.

Q. Can you state what the rate of pay for a miner at the Climax Molybdenum was at the time you were there? A. The rate of pay has been increasing for the past year steadily. It was $5, I believe, at the time I started there, and today it is in excess of $6.

Q. To your knowledge, is the operation of that mine a steady proposition? A. Yes, decidedly.

Q. Can you give any reasons why you make that statement? A. Climax Molybdenum Company has not been able to catch up in its orders for five years. The demand exceeds the supply; or, rather, the demand exceeds the rate of production.

Q. At the time you were working there, Mr. Bambrick, what was the approximate number of employees on the payroll? A. In the vicinity of a thousand.

Q. Are you familiar with the type of job that a miner or a mucker would have working here in the Copper Queen Branch, Mines Division, of Phelps Dodge? A. Yes.

Q. Would you say that the type of work done by a man classified as a miner or mucker at the Climax Molybdenum would be substantially the same? A. Yes, substantially.

Q. Is the Climax Molybdenum Company the only company operating the Climax in Colorado? A. In Climax, yes. The only thing there is the mine.

Mr. Kitchel: That is all.

Mr. Persinger: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Where are you now employed, Mr. Bambrick? A. Phelps Dodge Corporation, at the Junction shaft.

Q. In what capacity? A. Mucker.

Q. Do you belong to the union? A. No, sir.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: May both of these witnesses be dismissed, Mr. Examiner?

Trial Examiner Kennedy: Yes, that is understood, unless counsel state otherwise.

A. C. Reifsnider, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination:

Q. (By Mr. Kitchel) Mr. Reifsnider, are you presently employed by the Phelps Dodge Corporation? A. Yes, I am.

Q. What is your present position with the company? A. Master Mechanic.

Q. At the Mines Division? A. Yes, Mines Division.

Q. Were you employed at that position during the years 1931 to date? A. Yes.

Q. Are you acquainted with Mr. H. J. Montgomery? A. Yes, I am.

Q. As Master Mechanic, Mr. Riefsnider, do you supervise all of the surface operations of the Mines Division? A. Yes, practically, the mechanical work, surface labor and watchman.

Q. You have stated, I believe, that you are acquainted with Mr. H. J. Montgomery? A. Yes.

Q. Did he come under your jurisdiction at any time in 1931? A. Yes. At the time the operations at the concentrator ceased in the latter part of '31, Montgomery came over to the Mechanical Department, and at that time, in order to look after the property—that is, the concentrator, which was idle, he was assigned there as a resident watchman.

Q. Did he live there at the concentrator? A. Yes. By that I mean he was provided living quarters and lights, water and fuel. He lived there on the property to look after it.

Q. How long did he stay there? A. Well, he wasn't there but a few months.

Q. What was your experience with Mr. Montgomery on that job? A. Well, the difficulty with Montgomery there was he spent too much time away from the job. His duty there was simply to spend his time there and look after the property, but he was inclined to leave the place. In fact, he went up to Warren several times and, I believe, worked on some property he had up there. He was cautioned about leaving the property and, of course, he said he wouldn't leave. But he would leave during the night and would come in during the night late, as well as being away in the daytime.

Q. Was he ever given permission to leave his job? A. No.

Q. After he served two or three months as watchman there, was he transferred? A. Yes, for that reason. He wasn't taking care of the job there. But in view of the long service he had with the company he was taken to one of the mine change rooms and made a change-room attendant.

Q. How long did he stay on that job? A. That was again a matter of some months, and, the same difficulty—well, not the same difficulty, but he wasn't giving satisfaction, and, instead of taking care of the work assigned to him, he preferred, rather, to argue with the boss than to do what he was told. So he was cautioned again about his attitude, and at that time he was moved to the boiler shop as a boilermaker's helper.

Q. How long did he stay on that job?

Trial Examiner Kennedy: Just a minute. I would like to have the personnel record of this man that you are testifying about.

Mr. Kitchel: I can give you a copy of it here, Mr. Examiner. This is a copy of the record, which was put in evidence.

Trial Examiner Kennedy: Very well, proceed.

Q. (By Mr. Kitchel) How long did he stay in that job in the boiler shop? A. I don't remember just the month, or even the year, that he went into the boiler shop, but we had largely the same trouble with Montgomery there—that is, his indifference—his indifferent attitude toward his job. He was a fluent talker and inclined to spend more time talking with other men than taking care of his work. So he was cautioned about that again. Then along in July of '34 he was even outside of the shop and talking to gangs working outside. At that time Montgomery was discharged.

Q. Was he warned before that discharge? A. Yes. He had been warned about leaving his work and spending his time talking.

Q. After that discharge, Mr. Reifsnider, did he return to the employ of the company? A. Yes, he did. He came to me and talked to me about it, but I told him that after the warnings that he had had that I couldn't see that he was entitled to return to work. So he went to see Mr. Henrie, and Mr. Henrie thought that he should be given still another chance.

Q. Was he reinstated? A. So he was reinstated after a penalty of a lay-off. I don't remember whether it was 15 days or 30 days, but it was a penalty.

Q. Well, Mr. Reifsnider, are you familiar with the record of Mr. Montgomery in the employ of the company prior to the time when he went on as watchman at the concentrator? That would be prior to 1931. A. Yes, inasmuch as I know that he had difficulty with most of the foremen that he had worked for and had been discharged several times and reinstated prior to that time.

Q. Based upon his record as you know it, Mr. Reifsnider, would you have him in your employ in the mechanical department? A. Not willingly, no. I wouldn't want him. Montgomery is not the type that we would want in the department.

Q. Do you consider his record unsatisfactory? A. His record is unsatisfactory, and he is not an asset. He is more of a—well, demoralizing spirit in a gang rather than an asset to the gang.

Q. Would your opinion on that question be changed in any way if you knew that Mr. Montgomery had received a wallet upon which was inscribed that it was a gift from the company because of 10 years' consecutive service without a lost-time accident? A. No, it wouldn't. Those wallets were given out to all the employees who had a 10-year record without a lost-time accident; not based on ability or attitude towards their work.

Q. Was the type of work that Mr. Montgomery was engaged in while employed by the company such that there was any great hazard? A. No, no. To my knowledge, the work that he was doing—I can't recall that at any time there was a lost-time accident.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Cross examine.

Cross examination:

Q. (By Mr. Persinger) Mr. Reifsnider, just what were Mr. Montgomery's duties at the time he was a watchman? A. The only duties were to spend his time on the property. You are speaking of the concentrator set-up? You see, he was a watchman in the concentrator and later a change-room watchman. At the concentrator it was simply spending his time on the property to see that it was taken care of.

Q. And what was the objection to him at that particular time? A. Leaving the property instead of staying there and taking care of it.

Q. And who was his immediate superior at that time? A. The chief watchman.

Q. Did you have a discussion with the chief watchman about Mr. Montgomery? A. Yes.

A. C. Reifsnider—For Respondent—Cross.

Q. Did the chief watchman give him permission to leave at any time? A. Not that I know of.

Q. Did you ask the chief watchman if he had given Mr. Montgomery permission to leave at any time? A. Yes.

Q. Did Mr. Montgomery tell you that he had been given that permission? A. No.

Q. At the time he was transferred to boilermaker's helper, what was his job at that time? A. He was assigned almost all the time on repairing the mine cars.

Q. Was that repairing all done in the boiler shop? A. Yes.

Q. Who was his immediate superior then? A. Boiler shop foreman.

Q. Do you know what his name was? A. Yes, Holt.

Q. And did Mr. Holt complain to you about Mr. Montgomery? A. Yes.

Q. What was his complaint? A. That he was not attending to his work and he had to be spoken to about his attitude.

Q. Now, I believe you stated that Mr. Montgomery was transferred from his department as a watchman to boilermaker's helper in view of his long service with the company, is that cofrect? A. That is right.

Q. Is that a customary policy of the company? A. Yes, sir.

Q. Now, according to this record, he was discharged while he was boilermaker's helper, and reinstated on July 20, 1934. After that date did you have any complaints about him that you remember? A. Well, his work wasn't improved any, his attitude was largely the same.

Q. About how long do you estimate you would have continued to keep him in that position if nothing had intervened? If work would have continued just as it was indefinitely? A. No, we would not.

Q. Can you estimate any time? A. Well, it wouldn't be more than a matter of months.

Q. But, as a matter of fact, you did keep him in that position for nearly a year until he walked out, is that correct? A. Yes.

Mr. Persinger: I have nothing further.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Did you say that Montgomery's services were unsatisfactory from July 26, 1934, until June 13, 1935? A. Yes, they were.

Q. Why did you keep him on? A. For the same reason that he had been reinstated, on account of his long service.

Q. You keep people on who have long service, regardless of whether their services are satisfactory or not? A. It has been done for a period of time, yes.

Q. When did you first learn that Montgomery belonged to this union? A. I don't think I can state any time that I did know that he belonged to the union.

Q. You knew, though, didn't you? A. I knew it at the time he was outside of the shop talking to the members outside.

Q. When was that? A. That was in July of '34.

Q. July, '34? A. Yes.

Q. A year before the strike? A. Yes.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: May I ask one more question?

Redirect examination:

Q. (By Mr. Kitchel) What was the reason that Mr. Montgomery was discharged at that time? A. He was at that time outside of the shop leaving his work and attempting to organize the Mexican laborers.

Q. Was that during working hours? A. Yes.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witnessed excused.)

Mr. Kitchel: This witness has testified and been sworn, Mr. Examiner.

Trial Examiner Kennedy: What is your name again?

Mr. Fisher: J. W. Fisher.

J. W. FISHER, a witness recalled by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and further testified as follows:

Direct examination:

Q. (By Mr. Kitchel) Mr. Fisher, in June, 1935, were you in charge of the operations at the three operating shafts? A. Yes, sir.

Q. What were those three shafts? A. The Cole, the Junction and the Campbell.

Q. In that capacity, were you familiar with the extent of the operations from day to day? A. Yes, sir.

Q. Do you recall, Mr. Fisher, the fact that several men walked out on June 10, 1935? A. Yes, sir.

Q. What was the immediate effect of that walk-out on the operations of the company? A. Well, for several days there was a slow-up, I would say for five to six days. After that we replaced them just as soon as possible, got men in their places and segregated them with the older employees; the newer men were put in the places of these men that walked out, and operations continued. I would say from the 18th on they were normal.

Q. Were the operations normal, Mr. Fisher, on July 3, 1935? A. July 3rd?

Q. Yes. A. Yes, sir; I would say the last week in June they were normal.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: You may cross examine.

Cross examination:

Q. (By Mr. Persinger) Do you know how many pounds of copper were actually taken from the mine during the month of June? A. You will have to get that from Mr. Buell. I don't talk in pounds. You can talk tons to me.

Q. Well, I am afraid I can't talk tons in this particular instance.

Do you know the tonnage production for June for the entire three shafts? A. For the entire month of June?

Q. Yes. A. Yes.

Q. What was it? A. 19,000.

Q. 19,000? A. No, it was 30,936. Do you want July?

Q. 30,936 tons of ore? A. That's right.

Q. Can you tell me what the production was in May? A. In May? Around 37—38——

Mr. Kitchel: Mr. Persinger, may I interrupt a moment? I think that we can expedite this.

Have you obtained the figures on this question.

The Witness: I have. I base my testimony on the figures I received from Mr. Buell.

Mr. Kitchel: Have you them with you, Mr. Fisher?

The Witness: Yes.

Mr. Kitchel: I think if he can refer to that it will aid his testimony.

The Witness: I can give it to you very close.

Q. (By Mr. Persinger) Can you give those to me for May, June, July and August, if you have those? A. Yes.

I can give them to you, and I might say a few words about our working days there.

In May we produced 40,341 tons, with 23 working days—that is, 23 under the ground;

In June, 30,966, with 3 days short;

We worked 20 days in June, showing the slow-up. From the 10th to the 15th—I may say, we over-produced the last week of June, due to various conditions underground.

Now, you wanted July, Mr. Persinger?

Q. If you have that; yes. A. 35,450.

Q. Do you have August? A. August, 40,329, with another 23 days' work.

Q. 23 days in August? A. Yes, sir.

Q. How many days in July? A. In July, 22.

Q. Do you know how long it was after June 10th before there were as many employees on the company payroll as there was on June 7th? A. I think there were a few more on June 10th. Did you say June 10th?

Q. June 10th, of course, was the strike. A. Yes.

Q. A certain number walked out. How long was it before those were replaced, do you know? A. They were replaced by the 22nd to the 28th of June.

Q. They were replaced late in June? A. Yes, sir. There was more men on the underground the latter part of June than there was on the 7th of June or the 6th of June. There was more men working in the latter part of June.

Mr. Persinger: I have no further questions.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Kitchel) Mr. Fisher, I will ask you whether or not a variation of four or five thousand tons between two months is an abnormal variation, in any sense of the word? A. No. I have seen the months vary six to eight thousand tons in a month. There are many conditions to cause that.

If you are familiar with underground work, you will be able to see that a lot of stopes may come in the gob, that is, filled. They are empty; they are cleaned out. There may be a great many of those come in certain months. Sometimes you have a run of two or three months, and then an unusual amount of fill put in, timbering and catching up, before those stopes are ready to produce to capacity again. So I have seen months that we vary from six to eight thousand tons.

Q. Six to eight thousand tons? A. Yes.

Mr. Kitchel: That is all, I believe.

Trial Examiner Kennedy: Anything further?

Recross examination:

Q. (By Mr. Persinger) Was your normal development work interrupted in June? A. The normal development work?

Q. Yes. A. Our development work is controlled absolutely by the amount of fill that we need, the amount of gob. Do you understand what I mean?

Q. Yes. A. We don't hoist any waste. We break this waste and replace the ore that is taken out, and so on.

Q. But you haven't yet answered my question.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: No.

Q. (By Mr. Persinger) It was about as usual? A. I think so.

Q. And in July it was the same? A. It varies very much, you know, like I said; it was governed by the amount of fill that we needed. So I wouldn't know exactly what you would call "normal development." It goes up and down as the ore is mined.

Q. Was there any necessity for taking men off development work which had been planned, to put them on other jobs, and thereby interrupt the development work? A. No, no.

Q. Do you have a planned production schedule that indicates that in a certain month so much ore should be produced by the Copper Queen Mines? A. Usually that comes out a little before the first of the month.

Q. Do you frequently fall below that production schedule? A. Sometimes we do, and very often that is changed. It's changeable during the month—that is, according to the grade that you take out.

Q. Do you know if it has frequently happened that during any given month you have fallen so far behind your production schedule that another mine of the company—say the United Verde—would be given a portion of the production which you were supposed to produce, in order for the company to get out its quota? A. No.

Q. Is that customary? A. No, I haven't any recollection of that.

Q. You would not know about that? A. No.

Q. Do you know what your production schedule was for June? A. No, I couldn't tell you. Like I say, that changes. It varies in the month on account of the grade that you mine.

Q. You do not know, then? A. If it is a higher grade, you don't need so many tons. Very often we go to a lower grade and increase the tonnage.

Q. Do you know if in June you were below your production schedule? A. Not entirely; very little below the estimate.

Mr. Persinger: I have nothing further.

Mr. Kitchel: Nothing further, Mr. Examiner.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Mr. Fisher, how long have you been with the Phelps Dodge Corporation? A. Since 1930, I think.

Q. 1930? A. Yes.

Q. During that time, has the company, to your knowledge, had any contracts with any labor organizations? A. No, I have no knowledge of that.

Q. Do you know anything about the activities of labor organizations in other properties of the corporation? A. At the other properties?

Q. Yes. A. No, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Kitchel: Respondent rests, Mr. Trial Examiner.

Trial Examiner Kennedy: Have you anything in rebuttal?

Trial Examiner Kennedy: Anything else?

Mr. Kitchel: Respondent rests, Mr. Trial Examiner.

Trial Examiner Kennedy: Anything in rebuttal?

Mr. Persinger: I wish to call Mr. Henrie.

Trial Examiner Kennedy: Is Mr. Henrie here?

Mr. Persinger: I imagine Mr. Henrie will not be available tonight, but I would like to have him in the morning.

Trial Examiner Kennedy: If he is available tonight, let's get him tonight.

Mr. Kitchel: I think we can find out.

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Trial Examiner Kennedy: Very well. We will take a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Kitchel: Mr. Examiner, this witness has testified and has been sworn.

Trial Examiner Kennedy: Very well.

H. C. HENRIE, a witness recalled in rebuttal by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct examination:

Q. (By Mr. Persinger) Mr. Henrie, do you remember what your production schedule was for June, 1935? A. Not offhand, no. Let me see if I have it here. (Examining documents.) We were running between thirty and forty thousand tons a month all during that period.

Q. Well, that was not quite what I meant. Do you remember what was supposed to be your output in pounds? A. Not offhand, no. I couldnt tell you what we produced in pounds in June. If I had known that, I could have brought the figures.

Q. Do you remember about when the Cole shaft opened? A. Some time in the Spring of 1934; I would say March or April.

Q. Do you remember that men were transferred more or less constantly to the Cole shaft for a period of about a year?

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Mr. Kitchel: Just a moment, Mr. Henrie.

Mr. Trial Examiner, this witness was a witness for the Board at which time these matters were gone into, and I do not think at this time that this matter is proper rebuttal.

Mr. Persinger: If the Examiner please, this line of testimony was not gone into with this witness. It was with a number of, what counsel designates as, Board witnesses who were officials of the company, called by the Board. Although it is probably true that it is not proper rebuttal, it is nonetheless evidence material to the case. It has been the practice of the Board in the past not to make a very fine distinction between witnesses for the Board and witnesses for the respondent. In other words, the Board's attitude is that a witness on the stand is truthful, to be believed, no matter who calls him. If he is untruthful, he will not be believed, no matter who calls him, and that evidence which is material to the issues should properly be presented.

Trial Examiner Kennedy: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: Do you have reference to a particular time, Mr. Persinger?

Mr. Persinger: I have reference to a period of approximately 12 months.

Trial Examiner Kennedy: Beginning or ending when?

Mr. Persinger: Beginning about June, 1934, and ending at the time of the discharge of eight men on June 6, 1935.

Trial Examiner Kennedy: With that qualification, I will permit the question to be answered.

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Do you understand the question, Mr. Henrie?

The Witness: I would like to hear the question.

Trial Examiner Kennedy: Read the question, Mr. Reporter, with those qualifications.

(The record referred to was read by the Reporter, as set forth above.)

The Witness: I would say they were transferred starting with March or April.

Q. (By Mr. Persinger) But those transfers continued at different intervals over a period up to that time? A. Yes.

Q. Can you tell me who determined the policy to be followed in making those transfers? A. Transfers are made for different reasons.

Q. I mean, of course, referring to the transfers to the Cole? A. Well, as I stated the other day, the shaft started; the first group which they would need would be shaft repairmen. There you would pick men qualified for that particular type of work. No doubt on those men the general foreman or the mine superintendent would select those two or three first men. Following that would come some drift repairs and clean-ups. There again you would have to have experienced repairmen. There again the general foreman would probably pick those men. Now, as you got to production, then the foreman at the Cole would say, "I want five miners, four muckers, two motormen," or whatever his requirements might be. In that case, I presume the general foreman would talk to his other foremen and say, "We want five men, or four men, or three men of a certain type for the Cole."

Q. Did you ever issue any instructions, or were you aware that Captain Hodgson issued any instructions that only union men were to be sent to the Cole shaft? A. I don't believe any such instructions were ever issued.

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Q. Were you acquainted with the reason for the discharge of the, I believe, eight men who were discharged on June 6, 1935, all of whom worked in the Cole shaft? A. Yes, I knew about it.

Q. Was there any discussion among the management? A. There was.

Q. Concerning those men? A. There was.

Q. Can you tell us what that discussion was, approximately, in substance? A. Several employees had called on the management—Captain Hodgson, I am referring to now—complaining that hot water had been shut off. One man, I believe, stated that he had been locked out of the change room, not allowed to change after coming off shift.

There was also some complaint regarding shoving and pushing on the cages.

After several of these complaints had been received, one afternoon—and I don't know the date, but it was either the day preceding their discharge, or the day of their discharge—Captain Hodgson, myself, Mr. Barkdoll and Mr. Fisher met in the mine office.

For certain reasons I asked to be allowed to do the talking. I asked Jack what in the devil was the matter at the Cole shaft. He gave some information. We mentioned what we had heard and, as I recall it, Fisher said that he would check in with the foreman and the bosses at the Cole shaft.

Some time later he returned and confirmed this story of men leaving their working places, efficiency dropping, and, well, among other things, barking like dogs when the cage passed the stations, shoving in the cages, turning off the water in the change room, and a number of other things; I can't recall them all.

Well, the discussion ran something like this. I might add that we had been bearing down on the foremen and bosses in regard to discharge. That is to say, not discharge

until they were sure they had a case. In this case it looked as if they may have been a little lax, and the thought was that in view of the situation which had existed prior, slowing down, sabotage, many other things which necessitated many transfers to the Cole, that it was time to see who was going to run the mine, whether the employees were over there or the management, and Jack was told to clean up the situation.

Trial Examiner Kennedy: Who is "Jack"?

The Witness: Mr. Fisher.

Various names were mentioned, and, with the information he brought in, some eight men—I believe it was eight—were selected, and, I believe, Mr. Ratteree discharged the men. Beyond a certain conference point, I don't know what——.

Q. (By Mr. Persinger) Well, at the time of the conference, were you aware, or were you informed that those eight men who were later discharged were members of the Union? A. I would say that I knew that some of them were members of the Union. Some of those men, I couldn't positively say—that is, I think all of us knew that certain men probably belonged to the Union; their names would be in the paper; you would hear discussion; but as for telling every one that belonged to the Union, I couldn't do it, and I think that would hold true on that eight men.

Q. Were you aware at the time of those instructions, that on May 30, May 31, June 1st, and, I believe, June 5, about eight men who were not members of the Union were transferred to the Cole shaft? That was just prior to the discharge. A. No, I am not familiar with that transfer.

Q. Were you aware at about the first of June, 1935, that for some time there had been some ill-feeling between members of the Union and members of the Employees' Association? A. At what date?

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Q. About the first of June, 1935—that sometime prior to that there had been this ill-feeling, which had continued? A. Oh, yes.

Q. If you had known that substantially all the men in the Cole shaft on May 29th were Union men, would you have advised a transfer to that shaft of eight non-union men? A. No.

Q. Referring to the time of the strike, how soon after that did the company formulate a definite policy as to reinstatement or non-reinstatement of the strikers? A. Mr. Persinger, we haven't formed a definite policy to this day.

Q. During the period of the strike, was it a part of your duties to report on the progress of the strike to Mr. Beckett, and to hire officials? A. Oh, I wrote frequent memoranda to them, yes. They asked to be advised as to how things were going.

Q. During the progress of the strike and, say, from a period of about June 1st until the end of the strike, were you receiving information as to what went on at closed Union meetings? A. From when?

Q. About the 1st of June, '35, until August 24, when the strike was called off?

Mr. Kitchel: Just a minute. We object to that question. Now, we are going a way into collateral and irrelevant issues here, I believe.

Mr. Persinger: If the Examiner please, I do not think the question of receiving information of what went on at closed Union meetings just prior to and at the time when six union men were discharged, and during the course of this strike, is collateral. I think it is rather important.

Mr. Kitchel: Mr. Examiner, I cannot see that it has any bearing on the charge that there has been discrimination and refusal to reinstate these men.

Trial Examiner Kennedy: I will overrule your objection. You may answer.

Mr. Kitchel: The witness will not answer the question.

Trial Examiner Kennedy: You are instructed to answer the question, Mr. Witness. Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: I would have to state, on advice of counsel I refuse to answer.

Mr. Persinger: May I speak to counsel a moment?

Trial Examiner Kennedy: Yes.

(Informal discussion off the record.)

Mr. Persinger: I will at this time continue the cross examination, and, for the moment, I would like to waive the answer to the question.

Trial Examiner Kennedy: Very well.

Mr. Persinger: I will offer as Board's Exhibit next in order, a letter supplied by respondent in answer to a subpoena, dated June 10, 1935, and written to Mr. Louis S. Cates, President of Phelps Dodge Corporation, by Mr. Beckett, Vice-President and General Manager at that time.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: We object to the introduction of that letter, any portion of it, Mr. Trial Examiner, on the ground it is irrelevant.

Trial Examiner Kennedy: May I see the letter?

(Passing document to the Examiner.)

Trial Examiner Kennedy: Is there any question as to the authenticity of this copy?

Mr. Kitchel: No, Mr. Trial Examiner.

Mr. Evans: It was furnished by the respondent.

Trial Examiner Kennedy: It will be received in evidence.

Q. (By Mr. Persinger) The first paragraph of this letter from Mr. Beckett, who at that time was your superior, was he not? A. No.

Q. Not at that time? A. No.

Q. As Vice-President and General Manager he was higher than you, at least? A. Oh, yes, yes.

Q. The first paragraph reads: "Last week at Bisbee, the Mine Department sent over to the Cole shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole mine is largely union, as we have tried to segregate the union men there." You were not aware of that policy during the 12 months preceding the strike? A. No. The answer to that question is simply this: It was largely union, but men were segregated to the Cole mine simply for a reason that merely as a working basis, the foreman passing out men apparently that they didn't want, would send these men when they were asked for.

Q. But this—"The personnel of the Cole mine is largely union, as we have tried to segregate the union men there"—which obviously indicates a definite policy, does it not? A. I don't think there is any doubt that it was largely union.

Q. But was there a policy to attempt to segregate all the union men into the Cole shaft? A. Not that I ever heard of.

Q. The next to the last paragraph reads:

"I am sorry, of course, that this thing has come about but honestly, I feel it had to come some time as our union friends are so deplorably weak at the present time it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little play first."

Now, about the time of the beginning of the strike, was there any policy adopted by you or Mr. Hodgson, or, to your

knowledge, Mr. Beckett, concerning a possible arbitration of the strike?

A. At the start of the strike?

Q. Yes. A. Not that I know of.

Q. The last paragraph of the letter reads—the last sentence of the next to the last paragraph reads:

"I presume the next move will be that the union men will holler for help from somebody and want arbitration which we shall decline."

That was written June 10th. You were not aware of such a policy at that time?

A. Oh, I would say there was a natural inference there because when a man was discharged or barred in proceedings in progress, there was always threats of strike, bringing in mediators, trying to arbitrate. It was quite usual during that period.

Mr. Persinger: I will offer as Board's Exhibit next in order, which will be Board's Exhibit 58, a telegram covering substantially the same substance as is existent in Board's Exhibit 57.

Mr. Kitchel: We object, Mr. Trial Examiner, on the same grounds. It is irrelevant.

Trial Examiner Kennedy: May I see the telegram?

(The document referred to was passed to the Trial Examiner.)

Trial Examiner Kennedy: There is no question as to the authenticity of the document?

Mr. Kitchel: No question.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 58.)

Mr. Persinger: I will offer as Board's Exhibit No. 59 the letter dated August 6, 1935, from Mr. Beckett

to Mr. Cates, the last line of the second paragraph of which reads—I had better read the entire paragraph.

It reads as follows: "The State Federation of Labor people had a meeting in Tucson the other day as per the enclosed clipping. I understand that a Federation Committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators. They will, of course, be told that there is no way they can help."

Mr. Kitchel: We object to the introduction of that. It still does not seem to have any bearing on this case. Would counsel mind stating his position?

Mr. Persinger: It bears on the general policy of the company, which was not to reinstate these strikers and not to even listen to anyone who would suggest a possible settlement of the strike.

Trial Examiner Kennedy: Mr. Louis S. Cates at San Francisco is who?

Mr. Kitchel: President of the corporation.

Trial Examiner Kennedy: President of the corporation?

It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 59.)

Mr. Persinger: I will offer as Board's Exhibit No. 60 two letters jointly: One dated August 13, 1935, from Mr. Beckett to Mr. Cates, enclosing the second letter which is dated August 10, 1935, from Mr. Henrie to Mr. Beckett.

Trial Examiner Kennedy: Are you familiar with the letter?

Mr. Kitchel: Yes. We make the same objection, Mr. Trial Examiner.

Trial Examiner Kennedy: May I see it, please?

(The documents referred to were passed to the Trial Examiner.)

Trial Examiner Kennedy: We will take a short recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows):

Trial Examiner Kennedy: The hearing will be in session.

As to the offered exhibit, who is Mr. Barkdoll?

Mr. Kitchel: Mr. Barkdoll is General Superintendent of the Copper Queen Branch, Mines Division, until December 1, 1937.

Trial Examiner Kennedy: The exhibit will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 60.)

Trial Examiner Kennedy: Do you wish to offer this also? I have read it.

Mr. Persinger: I will in a moment.

Q. Mr. Henrie, on August 10, 1935, which was prior to the termination of the strike, in the year 1935, you wrote a letter to Mr. Beckett headed "A Memorandum Covering a Meeting With Committee Representing Arizona State Federation of Labor," and on page 5, the last paragraph, you state that "Mr. Barkdoll advised the committee it would be impossible to reinstate these men"—referring to the strikers—"who had quit the service of the company." Can you tell me when that policy was decided upon? A. Oh, you couldn't have put those men back to work at that time. The feeling was too great.

Q. I mean, when was it decided? A. Probably that day at that meeting. That was a meeting with a committee

representing the State Federation of Labor for the purpose of discussing the strike and its solution.

Q. And on the following page you reiterate, "We again advised the committee that the men who had quit could not be reinstated." Do you know if there has been any change in this policy since that letter was written? A. No, there hasn't.

Mr. Persinger: I offer as Board's Exhibit 61, a letter dated August 27, 1935, from Mr. Beckett to Mr. Cates, enclosing a letter dated August 24, 1935, from Mr. Henrie to Mr. Beckett.

Trial Examiner Kennedy: Are you familiar with the letter, counsel?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in order.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 61.)

Mr. Persinger: I offer in evidence as Board's Exhibit 62, a letter of July 14, 1937, from the General Manager—I believe Mr. Lavender, on that date—to Mr. Cates, and a second letter dated July 17, 1937, from the General Manager to Mr. Cates.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in order.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 62.)

Q. (By Mr. Persinger) Mr. Henrie, when did it first come to the attention of the company, so far as you know, that a campaign of distributing literature was started by

the C. I. O. in the Summer of 1937,—that would be about July? A. I couldn't tell you what date that it occurred,—what would be the date that they were passing them out at the gates. I don't know the exact date.

Q. Was there a meeting of the management at that time to discuss what policy to adopt in regard to that? A. No.

Q. Was there ever any such meeting, to your knowledge? A. Not to my knowledge.

Q. Was there any definite policy adopted on the question of whether to do anything or to do nothing about the organizing activities of the C. I. O., in July of 1937? A. No.

Q. Mr. Beckett—or, rather, Mr. Lavender, in writing to Mr. Cates, said, "We have instructed our watchmen to ignore these groups"—referring to the C. I. O. members distributing literature—"as long as they stay outside the company fence and property, and to caution the employees to likewise ignore them."

Now, can you tell me what method was used to caution the employees to ignore the C. I. O. distributors of literature? A. I don't think that is the way that is meant at all. May I have the letter just a second?

Q. Let me read the next paragraph and then you may. In the letter of July 17th, also from Mr. Lavender to Mr. Cates,——

"We will continue our policy of ignoring their presence as long as they stay outside the property fence and will attempt to have the men and authorities do likewise." A. Isn't it mentioned in those letters what we were afraid of was a mixup between the two groups, and that the men distributing literature stay away from the gate, and that the watchman at the gate tell the men to do likewise coming off shift?

Q. Well, now, what I wanted to know: The watchman at the gate was to tell the men coming off shift to ignore the

C. I. O. men who were distributing literature, was he not? A. Not in that sense, not to pick a fight, in other words.

Q. You think that is what it meant? A. Oh, there ain't no question about it. The whole letter is very evident.

Mr. Persinger: I will offer as Board's Exhibit No. 63, a letter dated June 25, 1935, from Mr. Beckett to Mr. Cates, and I am offering it solely for the pages 3 and 4, which concern, as Mr. Beckett states, the effect of the strike on the operations, and then he goes into the decrease in production for that period.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 63.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 63.)

Mr. Persinger: I will offer as Board's Exhibit No. 64, a letter dated June 11, 1935, which is merely a covering letter enclosing a letter dated June 10, 1935, from Mr. Henrie to Mr. Beckett.

Mr. Kitchel: May we have just a moment, Mr. Examiner?

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: We object to the portion of the letter referred to by counsel, I believe on page 2, upon the ground that it is immaterial to the issues in this case.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 64.)

Mr. Persinger: I will offer as Board's Exhibit No. 65 copies of two telegrams typed on the same sheet of paper, the first from Mr. Beckett to Mr. Cates, dated August 25, 1935; the one typed in below that from

Mr. J. H. Davis to Mr. Beckett, dated August 25, 1935.

Q. Can the witness tell me who Mr. J. H. Davis is? A. Office Manager of the corporation.

Q. Was that the position that he held at that time? A. Yes.

Mr. Persinger: Thank you.

Trial Examiner Kennedy: Any objection.

Mr. Kitchel: I have not found it yet, Mr. Examiner.

Mr. Evans: What is the date?

Trial Examiner Kennedy: August 25th.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 65.)

Mr. Persinger: I offer as Board's Exhibit No. 66 a letter dated June 5, 1937, from Mr. Henrie to Mr. Lavender. Mr. Lavender at that time was General Manager.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 66.)

Mr. Persinger: I offer as Board's Exhibit No. 67 a letter dated June 15, 1937, from General Manager, Mr. Lavender, to Mr. Cates, enclosing a letter dated June 11, 1937, from Mr. Henrie to Mr. Lavender.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit next in number.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 67.)

Q. (By Mr. Persinger) Referring to Board's Exhibit No. 64, Mr. Henrie, on June 10th you wrote Mr. Beckett, on page 2, "Mr. Dave Pearce, Editor of the Cochise County Labor News, called a special meeting of the Bisbee Miners' Union the evening of June 7th. Approximately 10 or 12 men attended this meeting. Mr. Pearce wired officials of the Mine, Mill and Smelter Workers' organization for permission to declare a strike."

How did that information come to you?

Mr. Kitchel: Just a minute. We object to that upon the ground it is improper rebuttal. It is immaterial. It is a part of counsel's case in chief.

Trial Examiner Kennedy: Well, we are not confined to any strict rules of evidence on order of presentation of testimony, Mr. Kitchel. Your objection is overruled.

Mr. Kitchel: I will ask the witness on advice of counsel not to answer the question.

Trial Examiner Kennedy: You are instructed to answer the question.

The Witness: On advice of counsel, I refuse to answer.

Trial Examiner Kennedy: You understand the penalty that accrues to you when you do not answer questions that have been ruled proper questions? Do you understand that?

Mr. Kitchel: I believe we have advised Mr. Henrie fully on that.

Trial Examiner Kennedy: I see.

Trial Examiner Kennedy: Do you still refuse to answer?

The Witness: On advice of counsel, yes.

Mr. Persinger: Referring to Board's Exhibit 64, the first paragraph states:

"Bisbee Miners Union voted last night to call off strike. Vote carried 40 to 10."

Can you tell me, Mr. Henrie, how you received that information?

Mr. Kitchell: Just a minute——

Mr. Persinger: Perhaps I should ask first——

Q. (By Mr. Persinger) Did you receive that information? A. It was public knowledge always.

Q. You mean the vote? A. Yes.

Q. On June 5, 1937, Mr. Henrie, you wrote Mr. Lavender, and you stated, among other things,——

"In order to ascertain, if possible, just what is embodied in the various charges, I shall probably have to talk with Nylander and some other people in Los Angeles, and shall probably leave here Tuesday afternoon."

Will you tell why, in order to determine what was in the charge, you should have to talk to anyone other than Dr. Nylander? A. I wouldn't have to.

Q. Can you tell me why you wrote to Mr. Lavender that you would have to? A. We had no idea just what those charges were, and wanted to find out before answering the letter.

Q. But to whom could you talk in Los Angeles other than Dr. Nylander, who could give you that information? A. I know of no one offhand.

Q. You wrote to Mr. Lavender on June 11, 1937, and you stated:

"I think our visit convinced Nylander that the Union does not have much of a case. From other sources, I ascertained that Nylander is dissatisfied with the outcome of the

1935 matter, and would like, if possible, to even up matters with the company."

What "other sources" did you receive that from? A. I had lunch with three or four business men around Los Angeles.

Q. Can you tell me their names? A. Yes.

Mr. Kitchell: I object to that. I can't see that that is relevant at all, Mr. Trial Examiner,—the names of people in Los Angeles.

Mr. Persinger: I think it is relevant, Mr. Examiner, that an official of the company in Bisbee, Arizona, would write first that he had to see other people in Los Angeles in order to receive information concerning charges filed with the Board, and then that he later did talk with other persons and received certain information relative to the attitude of the Board's Regional Director.

The Witness: I received my information from the Regional Director. You were present.

Q. (By Mr. Persinger) "From other sources I ascertained that Nylander is dissatisfied——" A. That part of it, yes; several business men from Los Angeles.

Trial Examiner Kennedy: Is there a question pending?

Mr. Persinger: Counsel has objected to the making known the names of those business men.

Trial Examiner Kennedy: Well, I don't understand that you directly asked him for those names. You asked him whether he could give the names, and he said "Yes." Now, if you want to pursue that, continue.

Mr. Persinger: I thought I had asked the question.

Q. (By. Mr. Persinger) What are the names of those business men?

Mr. Kitchel: I make the same objection at this time, Mr. Examiner.

Trial Examiner Kennedy: The objection is overruled. He may answer.

A. C. D.—or, C. T. Tibbett, President of the Los Angeles Steel Casting Company, an old friend of mine, knows Nylander very well.

Q. And the other two? A. Now, wait a minute. I think Mr. Ryan—I wouldn't be certain. He joined the lunch table sometime along there. Mr. Ryan, of Pittsburgh.

Q. And was there another? A. I believe Mr. Kitchel was there.

Q. And any other business men from Los Angeles? A. Not that I recall right now.

Mr. Persinger: I have nothing further, Mr. Examiner.

Trial Examiner Kennedy: You may examine.

Mr. Kitchel: Nothing further.

Mr. Persinger: There are two questions that have been asked this witness, and he has refused to answer. Will you indicate what position the Board desires to take?

Mr. Persinger: I cannot at this time, Mr. Examiner. I would prefer, on that particular point, to advise the Board itself and receive instructions from the Board.

Trial Examiner Kennedy: Will it be necessary to keep this case open until that matter has been determined?

Mr. Persinger: I think it might well be necessary to do so.

Trial Examiner Kennedy: Very well.

H. C. Henrie—For National Labor Relations Board—Recalled—Rebuttal—Direct.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Mr. Henrie, how long have you been with the respondent corporation? A. Since 1909.

Q. To your knowledge, has the corporation entered into any contracts with any labor organization during that time? A. Yes.

Q. Will you describe them? A. They have a collective book—perhaps I should say agreement. They have a collective bargaining agreement with the Employees' Association in Bisbee. They have an agreement or a contract with the A. F. of L. in Fort Wayne. They have a contract with the A. F. of L. again. I think it is the Bayway, New Jersey. It is in the manufacturing place.

Q. What was the last one? A. I think it is Bayway, New Jersey, Phelps Dodge Copper Products Company.

Q. Is that the same corporation as this? A. Well, a subsidiary.

Q. A subsidiary. Do you know of any other contracts they have with labor organizations? A. I believe they have a bargaining agreement with the Employees' Association at New Cornelia Branch, Ajo, Arizona.

Q. Ajo? A. Ajo, Arizona.

Q. Do you know when the contract or agreement was entered into with the Bisbee Association? A. August—no, let's see. It's either August or October, '35. I think I have it on my notes here.

Mr. Persinger: I believe it was August. I think so.

Q. (By Trial Examiner Kennedy) Do you know what the terms of that contract or agreement are? A. Yes.

Q. Can you describe them in general? A. Yes. On presentation of a sworn certificate, in which they showed they had the overwhelming majority of the employees as members, they asked for a collective bargaining agreement.

That agreement provides that the company will meet with them for the purpose of discussing any question—by that, I mean wages, hours; anything that came up of mutual interest—they to meet with what they termed the Executive Committee. It specifies that the company shall appoint its own members on the committee, shall meet at regular intervals. Questions that can't be settled by the Joint Committee or Council bargaining conference shall be subjected to arbitration, and it sets up in that section of it means of choosing arbitrators.

Q. It has no closed-shop feature? A. No.

Q. Do you know when the A. F. of L. contract at Fort Wayne, Indiana, was entered into? A. I do not.

Q. Do you know what particular union it was entered into with? A. It is a Federal Union, but the number, and all of that, I don't know.

Q. Do you know any more of the detail about the contract in the New Jersey plant? A. No, except there again, I think that was a Federal Union and covers the usual clauses that you find in such agreements and contracts.

Q. Do you know anything about when the contract at Ajo was entered into? A. No, I don't; but it has been in effect for several years, I know.

Q. With what union is that? A. I think they call that the Ajo Copper Miners' Association, or something like that.

Q. Is the Association affiliated with any national or international association? A. No.

Q. Is it a closed-shop agreement? A. No.

Q. Are these companies that you speak of—Fort Wayne, Indiana, and New Jersey, and the one at Ajo—the Phelps Dodge Corporation or subsidiaries or affiliates? A. Well, the New Cornelia Branch at Ajo would be a branch, just the same as the Mines Division here is at Bisbee.

Q. Part of the Phelps Dodge Corporation? A. Part of the Phelps Dodge Corporation. So would the plant at Fort

Wayne be part of the corporation, but through the Phelps Dodge Copper Products. Maybe I am getting twisted on some of the names, but bearing the same relation to the corporation as we do here at the Mines Division.

Q. Do you know about the New Jersey situation? A. The same corporate set-up.

Trial Examiner Kennedy: The same.

That is all. Any further questions?

Mr. Kitchel: Nothing further, Mr. Examiner.

Q. (By Mr. Persinger) Do you know, Mr. Henrie, if the agreement with the Employees' Association in the Mines Division, Copper Queen Branch, has any provisions concerning strikes? A. I don't think so.

Mr. Persinger: I have nothing further.

Mr. Kitchel: Mr. Examiner, before we adjourn I wonder if we could take a five-minute recess, and we might be able to stipulate on certain facts.

Trial Examiner Kennedy: Very well. The witness is excused.

(Witness excused.)

Trial Examiner Kennedy: We will take a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows):

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, it has been stipulated between counsel that just prior to and during the progress of the strike, respondent corporation had the local under surveillance, but counsel has assured me, and I will agree to stipulate, that that surveillance was discontinued a few months after the strike was concluded, and has not been recontinued at any time since. With that stipulation, I will be

glad to withdraw my questions which Mr. Henrie declined to answer on advice of counsel.

Trial Examiner Kennedy: Very well. Now, as I understand it, that closes the taking of testimony in this case. The record will show that the taking of testimony is formally closed.

Do counsel for either side wish to argue the matter orally before the Trial Examiner?

Mr. Kitchel: I don't believe that we do, Mr. Examiner.

Trial Examiner Kennedy: The Board's attorney?

Mr. Persinger: The Board does not wish at this time to argue the matter.

Trial Examiner Kennedy: Very well.

The parties may apply to the Board within five days from now for leave to argue the matter orally before the Board, if they so desire. That is not compulsory. The parties are afforded an opportunity to file briefs, if they so desire, with the Trial Examiner.

What is the position of the Board's attorney?

Mr. Persinger: I believe, Mr. Examiner, that the Board will not file a brief.

Trial Examiner Kennedy: Respondent counsel?

Mr. Kitchel: The respondent would like to file a brief.

Trial Examiner Kennedy: Very well. The brief will be filed by placing in the mail, addressed to the Trial Examiner at 745 Pacific Electric Building, Los Angeles, California, within five days at this date. The Board's attorney will be served a copy, and Board's attorney will be accorded an opportunity to answer the brief, if he so desires.

Mr. Kitchel: Mr. Trial Examiner, could that period be extended at all?

Trial Examiner Kennedy: No, sir; it cannot. You are not forced to file a brief. If you do not wish to,

you do not have to. If you are going to file one, I want it in the mail within five days of this time.

The Board's attorney will file an answer within three days of receipt of respondent's brief, if he desires to do so. That is not compulsory.

With that, gentlemen, the hearing is concluded.

Mr. Kitchel: Mr. Examiner, excuse me just a moment. Would it be in order, Mr. Examiner, within that period of five days, rather than to ask for a recess at this time, if at some time, anyway, to make preparation for us to file our written motions to dismiss?

Trial Examiner Kennedy: You have already made your motion to dismiss at the conclusion of the Board's case, and those motions have been disposed of.

Mr. Kitchel: Well, we have two or three motions that we want to add to that, based upon the testimony which has been brought out on the defense.

Trial Examiner Kennedy: I will hear them all.

Mr. Kitchel: Respondent, then, renews the motion that he made at the close of the Board's case, and, in addition to that, respondent moves to dismiss the case on the ground that there has been no evidence to show that the mining operations of the Mines Division, Copper Queen branch of respondent, constitutes commerce, or that the labor relations within those operations in any way affect commerce, and that regulating of those relationships of employers and employees within the Mines Division is without the power of Congress, under the Tenth Amendment.

Trial Examiner Kennedy: Do you wish to speak on your motion?

Mr. Kitchel: No, Mr. Trial Examiner.

Trial Examiner Kennedy: Do you wish to speak against the motion, Mr. Persinger?

Mr. Persinger: No, only to repeat what I stated once before——.

Trial Examiner Kennedy: I have already heard what you said before, so if you have nothing to add to it, it is not necessary.

Mr. Persinger: I have nothing to add.

Trial Examiner Kennedy: The motions are severally denied.

Mr. Kitchel: In addition, the respondent moves to dismiss the complaint on the ground that there was no strike in effect on July 5, 1935, the effective date of the Wagner Act, that none of the complaining witnesses were employees within the definition of the Wagner Act on that date, and that any affirmative order of the Board with respect to those 45 complainants would be a denial of the liberty of contract under the Fifth Amendment, and any affirmative action in the way of back pay would be a denial of due process under the Fifth Amendment, and a denial of trial by Jury under the Seventh Amendment to the Constitution.

Trial Examiner Kennedy: Anything to say on that?

Mr. Persinger: Nothing but what has already been said.

Trial Examiner Kennedy: The motion is denied.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: That concludes this hearing, and I wish, before the report is completed, to compliment counsel on both sides for the expeditious and efficient handling. It is one of the best presentations that I have had the privilege of witnessing.

I want to thank you all.

(Whereupon, at 9:15 o'clock p. m., the hearing in the above-entitled matter was concluded.)

Board's Exhibit No. 5.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Stipulation.

For the purpose of the hearing in the above entitled case, the following facts are hereby stipulated and agreed to by and between the attorney for the National Labor Relations Board and the attorneys for respondent, Phelps Dodge Corporation:

I.

Phelps Dodge Corporation was incorporated under the laws of the State of New York on August 10, 1885.

The following is a list of the wholly owned active subsidiaries of Phelps Dodge Corporation:

(1) Mining properties:

a. Moctezuma Copper Company with properties located in the district of Moctezuma, State of Sonora, Mexico.

b. Compania Minera de San Carlos, S. A. with properties located in the State of Chihuahua, Mexico.

(2) Copper refining:

a. Nichols Copper Company with plants located at Laurel Hill, New York, and El Paso, Texas.

(3) Copper fabricating:

a. Phelps Dodge Copper Products Corporation with plants located at Bayway, New Jersey, Yonkers, New York, Fort Wayne, Indiana, and Los Angeles, California.

(4) Utilities:

a. Ajo Improvement Company at Ajo, Arizona.

b. Warren Company at Warren, Arizona.

c. The Morenci Water Company at Morenci, Arizona.

d. Upper Verde Public Utilities Company at Jerome Arizona.

(5) Mercantile companies:

a. Phelps Dodge Mercantile Company with stores at Dawson, New Mexico, Bisbee, Douglas and Ajo, Arizona.

(6) Railroads:

a. Verde Tunnel & Smelter Railroad Company operated between Jerome and Clarkdale, Arizona.

(7) Dawson Fuel Sales Company at Dawson, New Mexico.

(8) Cochise Publishing Company at Bisbee, Arizona.

II.

Following is a list of the ore produced at the various mines of the Phelps Dodge Corporation during the fiscal years 1936 and 1937, and the destinations of such ore:

Board's Exhibit No. 5.

1. *Copper Queen Branch, Mines Division:*

The Copper Queen Branch, Mines Division, of Phelps Dodge Corporation, produced 795,946 dry tons of ore in the year 1936, and 967,249 dry tons of ore in the year 1937. In the year 1936, 785,061 tons of copper smelting ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation, at Douglas, Arizona, 10,453 tons of basic sulphide ore were shipped to the smelter of the American Smelting and Refining Company at El Paso, Texas; and 432 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company at El Paso, Texas. In the year 1937, 967,049 tons of copper smelting ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation, at Douglas, Arizona, and 200 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company at El Paso, Texas.

2. *New Cornelia Branch:*

In the year 1936, the New Cornelia Branch of the Phelps Dodge Corporation, produced 4,912,956 tons of milling ore, and in the year 1937, produced 6,085,511 tons of milling ore. In the year 1936, all of the concentrates produced from these milling ores were shipped from Ajo, Arizona, to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona. In the year 1937, approximately 85% of the concentrates produced from these milling ores were shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona, and the balance was shipped to the smelter of the Morenci Branch, Smelter Division of Phelps Dodge Corporation at Clifton, Arizona.

3. *United Verde Branch, Mine Division:*

During the year 1936, the United Verde Branch, Mine Division, of Phelps Dodge Corporation, produced 1,302,974

tons of smelting and milling ore and in the year 1937, 1,433,330 tons of such ore were produced. All of the production for both years was shipped from Jerome, Arizona, to the smelter of the United Verde Branch, Smelter Division, of Phelps Dodge Corporation at Clarkdale, Arizona.

4. *Morenci Branch, Mines Division:*

In the year 1936, the Morenci Branch, Mines Division, of Phelps Dodge Corporation produced 1,258 tons of precipitates, and in the year 1937, 9,269 tons of precipitates. In the year 1936, the entire production was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona. In the year 1937, 794 tons were shipped to the smelter of the Morenci Branch, Smelter Division, at Clifton, Arizona, and the balance of the production for that year was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona.

5. *Stag Canon Branch:*

In the year 1936, the Stag Canon Branch of Phelps Dodge Corporation, located at Dawson, New Mexico, produced 267,118 tons of coal, and in the year 1937, 271,178 tons were produced. In both years, approximately 75% of the production was sold to railroads and the balance was sold to the New Mexico Power Company and to others for various commercial uses.

6. *Moctezuma Copper Company:*

In the year 1937, the Moctezuma Copper Company, a wholly owned subsidiary of Phelps Dodge Corporation, at its mine located in the District of Moctezuma, State of Sonora, Republic of Mexico, produced 35,737 tons of milling ore, all of which was shipped to the smelter of the Copper Queen Branch, Smelter Division, of Phelps Dodge Corporation at Douglas, Arizona.

Board's Exhibit No. 5.

III.

The following is a list of the tonnage of refined copper produced by Nichols Copper Company at its refineries at Laurel Hill, New York, and El Paso, Texas, during the years 1935 and 1936:

	Year 1935	*Year 1936*
	Pounds of Copper	
Laurel Hill, New York.	193,688,357	222,155,812
El Paso, Texas	166,082,707	188,096,706
Total	359,771,064	410,252,518

The division of the above refined copper production, as between the amount derived from Phelps Dodge Corporation copper bullion and from other sources, is as follows:

Laurel Hill, New York:	*Year 1935* %	*Year 1936* %
Production from,—		
Phelps Dodge Corp. bullion	None	18.95
Other Sources	100.00	81.05
	100%	100%

El Paso, Texas:	*Year 1935* %	*Year 1936* %
Production from,—		
Phelps Dodge Corp. bullion	73.34	79.96
Other Sources	26.66	20.04
	100%	100%

Combined:		
Production from,—		
Phelps Dodge Corp. bullion	33.86	46.92
Other Sources	66.14	53.08
	100%	100%

The production at both of the above mentioned refineries was derived from materials the major portion of which came from without the States of New York and Texas.

The quantity of sulphuric acid used at the two refineries of the Nichols Copper Company for the years 1935 and 1936, in the refining of copper and in the manufacturing of blue vitriol (copper sulphate), and the source of the same, were as follows:

	Year 1935	*Year 1936*
Laurel Hill Refinery—Pounds	15,166,651	19,477,369
Source: General Chemical Co., Hudson River Works, New Jersey.		
El Paso Refinery—Pounds....	1,225,197	2,509,892
Source: Apache Powder Company, Benson, Arizona.		

IV.

In the year 1935 there were 87,913,579 pounds of refined copper, and in the year 1936 there were 126,922,000 pounds of refined copper in the shipments of fabricated products by Phelps Dodge Copper Products Corporation. With the exception of 2,178,073 pounds of copper in 1935, and 2,883,871 pounds of copper in 1936, the same being copper derived from scrap purchases, all of the copper was obtained from Phelps Dodge Corporation or its subsidiaries.

The shipments from the plants of Phelps Dodge Copper Products Corporation, expressed in percentages, for the years 1935 and 1936 were as follows:

Plant:	*Year 1935*	*Year 1936*
Bayway, New Jersey.....	85.7%	83.3%
Fort Wayne, Indiana	5.9	6.8
Yonkers, New York	8.4	9.9
	100%	100%

Board's Exhibit No. 5.

More than 50% of the copper contained in the fabricated products shipped from the various plants of the Phelps Dodge Copper Products Corporation was shipped out of the state in which the plant at which the fabricated product was produced is located.

NATIONAL LABOR RELATIONS BOARD
By DAVID PERSINGER
Attorney

PHELPS DODGE CORPORATION, Respondent
By ELLINWOOD & ROSS
WILLIAM A. EVANS
DENISON KITCHEL
Attorneys

Board's Exhibit No. 8.

Name TOM ABEDIN — No. 1190—1014

Previous Record: 11/16/25 Continuous.

9½ years service with C &A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/18/31	ReInst	Miner	1190	Fisher	Request of Lavender R.F.		
3/ 8/32	Dischgd	"	"	"		Stoping & Clean Up	Sharp
2/13/34	ReEmp	Miner	1014	Fisher	Request to Fisher		
6/10/35	Quit	"	"	Marshall	Walked out when strike was called—Picketed all during strike.		

Board's Exhibit No. 10.

Name WILLIAM DAY — No. 915—1535

Previous Record: 4/18/29 continuous.

2 yrs. service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans.	Mucker	915	Fisher	From C&A Payroll.		
4/29/35	"	Motor swmpr.	1535	Ratterree			
6/10/35	Quit	" "	"	"	Walked out when strike was called and picketed all during strike.		
6/ 6/35	Dischgd.	" "	"	Pomeroy	Creating trouble on the job and in the changeroom.		

Board's Exhibit No. 13.

Name LEVIE CRANDAL — No. 442—1188—442—1504

Previous Record: 3/22/27 continuous.

4½ Yrs. service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans.	Miner					
12/31/31	"	"	1188	Fisher	From C&A payroll		
2/15/32	"	"	442	Jewell	Ordered		
5/19/35	50 Day Fur.	"	"	"	To Oklahoma.	Hard worked.	Sowerbutts
3/ 5/35	Trans.	"	1504	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed.		
6/ 6/35	Dischgd.	"	"	Pomeroy	Creating trouble on the job and in the changeroom.		

Board's Exhibit No. 14.

Name EDGAR L. HARGUS — No. 3609—400—1247—1027—1532

Previous Record: 6/10/24 Quit; 11/13/24 to 7/26/26 Quit; 10/29/26 to 12/29/26 Quit; 2/4/27 to 3/7/27 RF; 5/20/27 to 8/30/27 Quit; 10/31/27 Continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
7/12/30	Trans	Miner	3609	Sinclair			
11/ 1/31	"	"	400	Jewell	Jctn.	Good stope Or Drift	Kennaugh
12/31/31	"	"	1247	Fisher			
1/ 1/34	Chgd No.	"	1027	"			
4/29/35	Trans	"	1532	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed all during strike.		

Board's Exhibit No. 15.

Name JOHN HENRY KEY — No. 777—412

Previous Record: 1/22/29 Continuous 4/12/30

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/25/30	ReEmp	Miner	777	Sinclair	Dropped		
5/30/34	ReEmp	"	412	Jewell			
11/ 7/34	Warned — not doing enough work.			Blinman			
6/10/35	Quit	"	"	Walton	Walked out when strike was called—Picketed for several weeks.	Average	Blinman

Board's Exhibit No. 16.

Name GEORGE EDWARD FRAZEE — No. 394

Previous Record: 4/25/34 Continuous.

Father worked for C&A for 16 Yrs.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
4/25/34	Emp.	Mucker	394	Jewell			
9/12/34	Warned — Not taking care of tools and steel in stope.			Jewell			
6/10/35	Quit.	"	"	Walton	Walked out when strike was called, Picketed several weeks.		

Board's Exhibit No. 17.

Name JOHN FOLEY No. 982

Previous Record: 6/2/26 Continuous.

5½ years service with C&A prior to merger.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
11/ 1/31	Trans	Motor Swmpr	982	Fisher	From C&A payroll.		
2/15/35	Drop	" "	"	"	Working in Mohave, California.		

Board's Exhibit No. 18.

Name EDWARD J. BOWDEN, JR. No. 3832—3419—1158—1537

Previous Record: 6/21/20 10/18/24 to 3/24/27 Quit; 8/20/27 Continuous.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
9/14/30	Trans	Miner	3832	Sinclair		Good Stope Miner	Colford
4/ 6/31	Trans	"	3419	Brownlie		Good Drift.	Lyons
11/ 1/31	"	"	1158	Fisher		Good Stope Miner	Ralph
4/29/35	Trans	"	1537	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed all during strike.		

Board's Exhibit No. 19.

Name PAUL AMARO No. 1024—1540

Previous Record: 2/16/34 Continuous.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
2/16/34	ReEmp	Miner	1024	Fisher			
5/ 9/35	Trans	"	1540	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed throughout strike.		

Board's Exhibit No. 20.

Name WILFORD DAVID MORTENSON No. 362

Previous Record: 7/3/29 to 1/28/30 RF; 4/2/34 continuous.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
4/ 2/34	Re Emp	Mucker	362	Jewell			
6/10/35	Quit	Miner	"	Walton	Walked out when strike was called and picketed first few weeks of strike.		

Board's Exhibit No. 21.

Name ANSON PERRY WINDSOR

No. 1191—6337

Previous Record: 6/11/34 cont.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/11/34	Emp	Mucker	1191	Fisher			
6/21/35	Trans. to sick list		6337		Off several months prior to June 10, 1935 with sore foot—quit June 21, 1935, when released. Did not return to work.		

626

Board's Exhibit No. 22.

Name E. A. CURTIS

No. 263—1288—290

Previous Record 4/7/25 Continuous.

6¼ years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans	Powderman	263	Jewell	From C&A Payroll.		
12/31/31	"	"	1288	Fisher			
2/ 5/32	"	"	290	Jewell	Ordered		
6/10/35	Quit	"	"	"	Walked out when strike was called—Later picketed all way through strike.		

Board's Exhibit No. 23.

Name WILLIAM DOUGHERTY No. 3773—425—432

Previous Record: 9/25/24 to 4/8/26 Quit; 8/11/28 to 9/4/28 Quit; 4/14/29 to 10/19/29 Quit; 3/6/31 Continuous.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
3/ 6/31	ReEmp	Mucker	3773	Jewell	Placed to work at Request of Management		
8/ 5/31	Dischgd	"	432	"	RF. Can only be used as a chute checker.		Finotti
6/ 1/34	ReEmp	"	425	Jewell			
10/15/34	Drop	"	"	"	Got his eye hurt and thinks he is crippled for life—Doesn't like to work anyway. Services Unsatisfactory — Not heavy on the work. Surly disposition and bosses don't like him.		Sowerbutts

627

Board's Exhibit No. 24.

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH
Labor Department
Box 630
Bisbee, Arizona

FEBRUARY 10, 1934

MR. TOM ABEDIN,
General Delivery,
Loweel, Arizona

DEAR SIR:

If you will call and see me at 8:00 a. m., Monday, February 12, 1934, I will have you examined for re-employment Underground.

Yours very truly,

M. A. BATEMAN

MAB.

M. A. BATEMAN
Employment Agent.

Board's Exhibit No. 25.

Name GROVER DEE WINDSOR No. 481

Previous Record: 6/8/34 continuous.

3 yrs. Tr. Dr.—P. D. M. Co.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/ 8/34	Emp	Mucker	481	Jewell			
6/10/35	Quit	"	"	"	Walked out when strike was called—Whole family also—Was on Picket line all during strike—Arrested for beating up Larry Kuder.		

Board's Exhibit No. 26.

Name JOE DUNKERSON No. 1010—214—1534

Previous Record: 9/3/37 Continuous.

8½ years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans	Trammer	1010	Fisher Hannon	Fr. C&A payroll #8412		
1/11/35	Warned — Doing insufficient work.						
4/29/35	Trans	Trammer	214	Walton	Ordered		
5/ 8/35	"	Mucker	1534	Ratterree	Requested		
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed all during strike.		

Board's Exhibit No. 27.

Name VERNON CURTIS No. 313—1237—229

Previous Record: 9/1/27 Continuous.

4 years prior service with C&A

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans	Motor Sempr	313	Jewell	From C&A payroll		
12/31/31	"	"	1237	Fisher			
1/18/32	"	"	229	Jewell	Request of Fisher	Good Motor Swamper & Mucker	
6/15/34	Quit	"	"	Walton	Taken off motor and told Walton to write it out. Was on motor for seven years. Thinks he got a bad deal.		

630

Board's Exhibit No. 28.

Name GROVER CORNETT No. 973

Previous Record: 4/4/29 to 2/19/30 RF; 6/10/35 Continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/10/35	ReEmp	Mucker	973	Marshall	Went out in the picket line instead of going to work—Highly recommended by J. W. Fisher.		

Board's Exhibit No. 29.

Name MARTIN VACLAV — No. 312—1005

Previous Record: 8/25/27 continuous.

4¼ yrs. service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans.	Miner	312	Jewell	From C&A payroll.		
12/31/31	"	"	1005	Fisher			
6/10/35	Quit	"	"	Marshall	Walked out when strike was called—On Picket Line.		

Board's Exhibit No. 30.

Name MONTAGUE L. REED — No. 313

Previous Record: 3/24/24 to 4/16/25 RF; 1925 to 1930 RF; 9/1/33 continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
9/ 1/35	Re emp	Macker	313	Jewell			
6/10/35	Quit	Shaftman	"	"	Walked out when strike was called—Beat up on Kruder and was held in custody by Sheriff's Office.		

Board's Exhibit No. 31.

Name CLYDE BIGELOW No. 3821—3425—389—968—389—1090

Previous Record: 8/20/20 and intermittent to 6/8/28 9/7/28 Continuous

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
9/10/30	Trans	Miner	3821	Sinclair			
4/ 6/31	Trans	"	3425	Brownlie		Good Drift	Lyons
11/ 1/31	"	"	389	Jewell		Good all round miner.	Stetson
12/31/31	"	"	968	Fisher		Good Stope Miner	McCloskey
2/15/32	"	"	389	Jewell	Ordered		
5/25/32	Dichgd	"	"	"	RF. Below Average. Ranch Owner. Hardly an average Stope Miner		Fuller
1/22/34	ReEmp	"	1090	Fisher			
6/10/35	Quit	"	"	Marshall	Walked out when strike was called and picketed, as well did his wife.		

632

Board's Exhibit No. 32.

Name MILTON LEWIS WYNN No. 496

Previous Record: 6/14/34 cont.

Vacation 1924.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
6/14/34	Re emp	Mucker	496	Jewell			
6/10/35	Quit	"	"	Walton	Walked out when strike was called		

Board's Exhibit No. 33.

Name ALEK KALASTRO No. 1170

Previous Record: 6/4/34 Continuous.

5⅚ Months for C&A—Father worked for C&A over 25 yrs. now deceased.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/ 4/34	ReEmp	Mucker	1170	Fisher			
6/10/35	Quit	"	"	"	Walked out when strike was called.		

Board's Exhibit No. 34.

Name WILLIAM HENRY BIGELOW No. 3826—417

Previous Record: 1907 1/6/23 Continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
9/10/30	Trans	Miner	3836	Sinclair			
8/ 6/31	Discharged	"	"	"	RF.	Average Repairman	Warner
5/30/34	ReEmp	Miner	417	Jewell			
6/10/35	Quit	"	"	Walton	Walked out when strike was called—Was on picket line and as well was his wife and mother.		

Board's Exhibit No. 35.

Name WILLIAM HIRIAM WINDSOR No. 981

Previous Record: 9/5/33 continuous.

8½ yrs. with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
9/ 5/33	Re emp	Miner	981	Fisher			
6/10/35	Quit	"	"	Marshall	Walked out when strike was called—with all the rest of the family—Was on picket line through strike.		

Board's Exhibit No. 36.

Name ELLIS MARION SCALES No. 3865—1202

Previous Record: 2/25/26 continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
3/26/28	Trans.	Miner	3865	Jewell			
12/31/31	"	"	1202	Fisher		Good motorman & mucker	Blinman.
6/10/35	Quit	"	"	Marshall	Walked out when strike was called and picketed all during strike.		

Board's Exhibit No. 37.

Name FRANK HAROLD ERKKILA — No. 1198

Previous Record: 6/11/34 Continuous

Worked for Dem 2 years.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/11/34	Emp	Mucker	1198	Fisher Marshall	Walked out when strike was called and picketed all during strike.		
6/10/35	Quit	"	"				

Board's Exhibit No. 38.

Name LUKE SERTICK (Sertick) — No. 311

Previous Record: 1/13/24 to 8/15/30 Quit; 9/5/33 continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
9/ 5/33	Re Emp	Miner	311	Jewell Walton	Walked out when strike was called and picketed all during strike.		
6/10/35	Quit	"					

Board's Exhibit No. 39.

Name MERRELL ERNEST JOHNSON No. 1078—1553

Previous Record: 1/12/34 Continuous.

1928 to 1931 C&A

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
1/12/34	ReEmp	Mucker	1078	Mucker			
4/29/35	Trans	"	1553	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed		

Board's Exhibit No. 40.

Name GEORGE GERHARDT No. 5666—5149—5116

Previous Record: 9/1/1910 8/30/22 Cont.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
8/ 2/23	chg #	Sharpener	5666	Hart			
11/ 1/30	Chgd. No.	"	5149	"			
4/ 1/32	"	"	5116	"			
6/10/35	"	"	5116	"	Walked out when strike was called.		

Board's Exhibit No. 41.

Name WILLIAM D. GRAHAM No. 1195

Previous Record: 3/15/29 to 9/2/30 Quit; 6/11/34 Continuous

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/11/34	ReEmp	Mucker	1195	Fisher	Walked out when strike was called and picketed all during strike.		
6/10/35	Quit	"	"	Marshall			

Board's Exhibit No. 42.

Name WILLIAM EDWARD SHARP, JR. No. 5788

Previous Record: 7/20/29 to 1/13/30 RF; 6/10/35 continuous.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/10/35	Re Emp	Helper	5788	Larsen			
6/10/35	Did not report for work when strike was called — Bad actor on picket line.						
6/28/35	Dropped	Helper	5788	Larsen	Worked one day June 11, 1935, only.		

Board's Exhibit No. 43.

Name LESTER F. BETHEL No. 494—234—1548

Previous Record:

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
7/11/32	Dropped				Unable to resume work after being paid one year's benefits. (Request of Management)		
9/ 8/32	ReEmp	Mucker	234	Jewell			
4/ 9/35	Trans	Miner	1548	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed.		

Board's Exhibit No. 44.

Name MIKE MIHELICH No. 206—1175—221

Previous Record: 4/14/16 Continuous

15½ years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
10/ 1/31	Trans	Pipeman		Jewell	C&A Merger—15½ years prior service at C&A		
11/ 4/31	"	"	1175	Fisher			
1/12/32	"	Ventilation	221	Jewell	Request of Dymock to Gary, Ind.		
6/ 8/32	30 Furl.	"	"	"			
6/10/35	Quit	"	"	"	Quit when strike was called.		

Board's Exhibit No. 45.

Name PETE D. CARETTO No. 273—1556

Previous Record: 8/29/33 Continuous.

10 year 8/2/22 to 10/31/31 for C&A

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
8/29/33	ReEmp	Cager	273	Jewell	Request of Management.		
4/29/35	Trans.	Miner	1556	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed.		

Board's Exhibit No. 46.

Name HENRY CLYDE WATERS No. 3464—372—1539

Previous Record: 7/10/31 continuous. 8/6/27 to 4/24/28 Quit; 11/7/28 to 7/17/30 RF.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
7/10/31	Re Emp	Miner	3465	Brownlie			
8/ 6/31	Dischgd.	"	"	"	R.F.		
1/15/34	Re emp	Miner	372	Jewell		Avg. Stope Miner.	Palmer
4/ 9/35	Trans.	"	1539	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called and picketed during most of strike.		

Board's Exhibit No. 47.

Name PHILITIES C. LYTLE

No. 1013—1520

Previous Record: 9/22/27 Continuous

4 years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans	Timberman	1013	Fisher	from C&A Payroll #8457		
6/ 2/34	"	"	1520	Ratterree			
6/10/35	Quit	"	"	"	Walked out when strike was called.		

Board's Exhibit No. 48.

Name JESSE EDGE

No. 229—1297—289

Previous Record: 6/29/29 Continuous

2½ years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans	Motor Helper	229	Jewell	From C&A payroll #3664		
12/31/31	"	" "	1297	Fisher			
2/15/32	"	" "	289	Jewell	Ordered		
6/10/35	Quit	" "	"	"	Walked out when strike was called picketed daily at Junction all through strike.		

Board's Exhibit No. 49.

Name H. J. MONTGOMERY

No. 6523—5953—5906—5773

Previous Record 1909—10/17/18 Continuous

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
8/ 1/27	Chgd. No.	Operator	6523	Moore			
10-28-31	Trans	Watchman	5953	Salmon			
5/ 1/32	Chgd No	"	"	"			
9/11/33	Trans	B M H	5773	Jones			
7/ 3/34	Dischgd	"	"	"	Not enough work.		
7/20/34	ReInst	"	"	"	Orders H. C. H.		
6/13/35	Quit	"	"	"	Walked out when strike was called. (Worked first three days.)		

641

Board's Exhibit No. 51.

Name J. M. MORRIS

No. 985

Previous Record: 6/28/26 continuous.

5 years service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
11/ 1/31	Trans.		985	Fisher	from C&A payroll.		
6/10/35	Quit		"	"	Walked out when strike was called.		

Board's Exhibit No. 52.

Name LEONARD GUESS No. 1186

Previous Record: 11/18/27 continuous

4¼ years service with C&A prior to merger.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
11/17/31	Reinst	Mucker	1186	Fisher	Request of Management		
1/14/35	Quit	Motorman	"	"	Bought out beer and sandwich joint in Douglas.		

642

Board's Exhibit No. 53.

Name FRANK PETERSON No. 1085

Previous Record: 1/22/34 continuous.

Feb. 1929 to Feb. 1930 for C&A.

Pension Service..... Years

Date	*Emp. Record*	*Occupation*	*No.*	*Boss*	*Remarks*	*Character of Service*	*Boss*
1/22/34	Re emp	Mucker	1085	Fisher			
6/10/35	Quit	Miner	"	Marshall	Walked out when strike was called and picketed during most of strike.		

Board's Exhibit No. 54.

Name HARVEY DOLPH EDGE

No. 236—3434—965

Previous Record: 1/19/24 Continuous

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
7/24/30	Trans	Miner	236	Colford			
6/11/31	"	"	3434	Brownlie			
11/ 1/31	"	"	965	Fisher	Div. B.	Good—Stope & Repairs	McCloskey
6/10/35	Quit	"	"	Marshall	Walked out when strike was called and he and wife picketed all during strike.		

643

Board's Exhibit No. 55.

Name BEN HARRISON STRINGER

No. 446

Previous Record: 6/5/24 continuous.

4 yrs. for C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks	Character of Service	Boss
6/ 5/34	Re Emp	Mucker	446	Jewell			
6/10/35	Quit	"	"	Walton	Walked out when strike was called and was on picket line.		

Board's Exhibit No. 56.

Name GEORGE C. ROHRER No. 453

Previous Record: 11/8/28 continuous.

3 yrs. service with C&A prior to merger.

Pension Service..... Years

Date	Emp. Record	Occupation	No.	Boss	Remarks
11/ 1/31	Trans.	Mucker	453	Jewell	From C&A payroll #9544.
5/19/33	50 Day Furl.	M. S.	"	"	To Oklahoma.
6/10/35	Quit	"	"	"	Walked out when strike was called and joined pickets.

Character of Service	Boss

Board's Exhibit No. 57.

—COPY—

JUNE 10, 1935.

AIR MAIL

MR. LOUIS S. CATES, President
Phelps Dodge Corporation
40 Wall Street
New York, N. Y.

DEAR MR. CATES:

Last week at Bisbee the Mine Department sent over to the Cole Shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole Mine is largely union as we have tried to segregate the union men there.

When these non-union men went over there was intimidation and coercion towards them on the part of the union men, who would leave their working places and visit the non-union men in the mine and be abusive to them. Later one of these non-union men was prevented from using the change room. Still later there was a fight up town between one of these non-union men and one of the union men. The situation was quite fast getting to the point where members of the Employees Association were asking if they were going to get protection and freedom from intimidation while working over at the Cole; and as to whether the company was going to run the Cole Mine, or the Union bunch.

As a result of all this the Mine Department laid off about seven men at the Cole Mine who had been responsible for this situation. As a result the union leaders called a strike, which went into effect this morning. As I wired you, there seem to be about 100 to 110 men on the picket line, perhaps half of which number were on our payroll and most of whom were the ones working at the Cole Mine. They tell me that

Board's Exhibit No. 57.

over 90% of the Junction and Campbell men are working as usual and so far as I can see the situation is not taken very seriously by the non-union men. So far the picketing is peaceful and I hope will remain so.

I am sorry, of course, that this thing has come about, but, honestly, I feel that it had to come sometime and our union friends are so deplorably weak at the present time that it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little "play" first.

It is never wise, of course, to under-estimate these things, but at the present writing it does not look very serious. I presume the next move will be that the union men will holler for help from somebody and want arbitration, which we shall decline.

If I am not here myself after tomorrow, I shall see that you are kept well advised.

Yours very truly,

Vice-President and
General Manager

PGB/d
Enc.
(Extra of Labor News, June 7, 1935)
(Hand Bill calling strike)

Board's Exhibit No. 58.

COPY OF WESTERN UNION TELEGRAM

DOUGLAS ARIZONA JUNE 10 1935

L S CATES PRESIDENT
PHELPS DODGE CORPORATION
40 WALL STREET NEW YORK N Y

IN LAST FEW DAYS NON UNION MEN SENT TO COLE MINE WERE COERCED AND INTIMIDATED BY UNION MEN SEVEN OF WHOM HAVE BEEN DISCHARGED (STOP) MINERS UNION THIS MORNING HAS PULLED STRIKE AT BISBEE (STOP) PICKET LINE CONSISTS OF ABOUT ONE HUNDRED MEN APPROXIMATELY HALF OF WHOM ARE EMPLOYED (STOP) VERY FEW WORKING AT COLE BECAUSE PRACTICALLY ALL UNION MEN WERE WORKING THERE BUT AT CAMPBELL AND JUNCTION OVER NINETY PERCENT OF NORMAL DAY FORCE IS WORKING (STOP) EVERYTHING PEACEFUL (STOP) WRITING AIR MAIL TODAY

P. G. BECKETT

Charge: Phelps Dodge Corpn
(Office of General Manager)

Board's Exhibit No. 59.

COPY

August 6, 1935

Mr. Louis S. Cates
c/o Sudden & Christenson
310 Sansome Street
San Francisco, California

Dear Mr. Cates:

I find on my return from the Coast that there is very little new to advise you of in regard to the labor situation at Bisbee. Some days there are practically none on the picket line and then again we have days when there may be thirty or forty. All in all, the last two weeks it has been quite quiet with the exception of a little powder that was exploded in an empty house but which did no particular damage.

The State Federation of Labor people had a meeting in Tucson the other day, as per the enclosed clipping. I understand that a Federation committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators, etc. They will, of course, be told that there is no way that they can help.

I have not had time yet to get any figures on the Bisbee production and development work for last month, but I am sure that it was up from the previous month.

Yours very truly,

Vice-President and
General Manager

PGB/d
Enc.
cc: LSC—New York

Board's Exhibit No. 60.

COPY

August 13, 1935

Mr. L. S. Cates, President,
Phelps Dodge Corporation,
40 Wall Street,
New York, N. Y.

Dear Mr. Cates:

I am enclosing herewith two copies of letter from Mr. Henrie reporting on meeting with Committee representing The Arizona State Federation of Labor, held at Bisbee, August 9th, 1935.

Very truly yours,

P. G. Beckett,
Vice-President and
General Manager

By

JHD-B
cc-LSC San Francisco

Board's Exhibit No. 60.

COPY

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH, MINES DIVISION
BISBEE, ARIZONA

AUGUST 10, 1935

MR. P. G. BECKETT,
Vice President and General Manager,
Phelps Dodge Corporation,
Douglas, Arizona.

Memorandum Covering Meeting with
Committee Representing
The Arizona State Federation of Labor,
August 9, 1935

DEAR MR. BECKETT:

A conference was held with a Committee representing the Arizona State Federation of Labor on Friday, August 9, 1935, at 1:30 p. m.

Messrs. E. F. Vickers, Fred Broughton, Roy Whitlow, of Douglas, Andy Holohan of Phoenix; and J. Durkin of Tucson composed the Committee.

Mr. I. H. Barkdoll and Mr. H. C. Henrie represented the Company.

Mr. Vickers opened the meeting by stating that the Bisbee Miners' Union had requested a Committee of the State Federation of Labor to meet with the Management of the Company in order to see what might be accomplished towards settling the strike at Bisbee.

Mr. Vickers stated that the Committee had been conferring for two days with representatives of the Bisbee Miners' Union and were sufficiently informed as to their side of the case, and added that no doubt the Company's version of existing conditions was different. However, he felt that something might be accomplished towards effecting

a settlement of the present difficulty by talking the matter over.

Mr. Holohan stated that we were no longer in the horse and buggy days, and that it should no longer be necessary to resort to force and strikes in order to compose existing difficulties.

Mr. Broughton added that he thought something might be accomplished through a discussion of the matter.

Mr. Barkdoll advised the Committee that he was quite agreeable to discussing the matter with them.

Mr. Durkin then stated that the matter would very easily be settled by the Company entering into a contract with the Bisbee Miners' Union. Such an arrangement would automatically stop the strike and provide a method whereby any grievances could be quickly and fairly settled.

Mr. Vickers then presented the Miners' Union version of the present trouble. Briefly he stated that the Union was formed and in a short time practically all employees of the Mines Division were members of this Union, following which the Company began discharging members of the Union for their affiliations. These wholesale discharges had the effect of so intimidating the membership that many of the employees who were in sympathy with the Miners' Union withdraw from the Union in order to preserve their jobs.

Mr. Vickers stated that the Committee had been informed that all of the men discharged were good workmen, men who had earned bonus consistently, and that they had been discharged because of their Union activity and not for cause. If these men had been discharged for cause, or for not doing their work, he felt that the men would have no grievances.

Mr. Durkin took up the story from this point and stated that an election had been held July 18, 1934, which was won by the Union, and the Company deliberately disregarded the wishes of the majority of its employees and ignored the Labor Board's decision. The Company also fought this decision through the various Labor Boards, knowing full well

that the Courts had no authority to enforce the Regional Labor Board's ruling. The net result of all of this campaign of intimidation resulted in reducing the membership in the Miners' Union to a mere handful; whereas, the great majority of the employees were anxious and willing to become members of this organization but would not join due to fear of losing their jobs.

Mr. Vickers then stated that eight leaders, working at the Cole Shaft, were discharged in a group for their Union activity, and that these men were not even told why they were discharged. Naturally, the Union felt that some action had to be taken for self-preservation.

Mr. Vickers added that everyone made mistakes and the Miners' Union made a mistake in calling the present strike. The Miners' Union had made many other mistakes. However, in his opinion, the easiest way to effect a settlement was to ignore the mistakes which had been made and make an honest attempt to compose the difficulty.

At the request of Mr. Barkdoll, I very carefully outlined the labor conditions in the District for the past two years, and stressed the point that no employee had been discharged for Union activity, but in each and every case there was sufficient cause to warrant the discharge; also, that practically all of these discharge cases had been reviewed by mediators or conciliators of the Department of Labor; that the Regional Labor Board had either formally or informally reviewed practically every case; and outlined the results of the hearing held by the Regional Board in Bisbee last fall where the Regional Labor Board decided that the cases presented warranted discharge.

The July 18th election was also reviewed and it was pointed out that at no time did the Bisbee Miners' Union have a majority of the employees as bona fide members of their organization; whereas, the Employees' Association, since last August, could show a membership in excess of seven hundred. The condition existing at the Cole Shaft,

Board's Exhibit No. 60.

prior to the discharge of certain men last June, was reviewed and the reasons for their discharge outlined.

At this point in the discussion, Mr. Durkin took the floor and entered into a tirade against company Unions and stated that the Phelps Dodge Corporation, through its policy of intimidation, had wrecked the Miners' Union, and that the Employees' Association was formed, dominated and owned by the Company, and that the majority of the men in that organization were members simply because they felt that their jobs were not secure unless they did join the Employees' Association.

I advised Mr. Durkin that I had endeavored to speak quite frankly and fairly on the matter and any statement I had made could be supported.

Mr. Durkin replied that it, of course, was the Company's story and he knew from talking with the other side just what the true picture was. In other words, he doubted it.

Mr. Whitlow then gave a rather rambling talk covering the period from 1916 to date. He stated he had worked for the Company during that period; had served as employees' representative and he knew there were many grievances, unfair practices, unfair conditions; that during the present trouble, the Company had hired boys not of legal age to work in the mines; that he himself had filed a complaint in one such case; and that recently he had been employed at the New Cornelia Branch and while he was there he had been solicited by a Foreman to join the Employees' Representation Plan, which showed conclusively that the Company established these Plans and the Employees' Association in Bisbee.

Mr. Whitlow then outlined the very satisfactory conditions existing on the railroads, due to contracts with the Brotherhoods, and stated that a similar condition would exist if a contract was entered into with the Bisbee Miners' Union.

Board's Exhibit No. 60.

Mr. Vickers then portrayed what he termed the terrible conditions which used to exist at the Bisbee Daily Review, and how all these conditions had been corrected through entering into a contract with the Typographical Union.

Mr. Whitlow then suggested that the strikers be reinstated by the Company, following which negotiations would be started towards working out a contract.

Mr. Barkdoll advised the Committee that it would be impossible to reinstate these men who had quit the service of the Company. Their jobs had been filled and the present working force would not stand for their being reinstated.

An attempt was made to outline the feeling which existed between the two groups and impress the Committee with the fact that two irreconcilable groups did actually exist prior to the strike. Also, that the men unquestionably would refuse to work with the strikers should they be reinstated.

Mr. Durkin then stated that if we wanted to co-operate, that might be a good way to bring the entire matter to a head, namely, to allow the present employees to strike in protest and then the Company could get the two groups together and have them iron out their difficulties. He was sure that they would all agree to a contract with the A. F. of L.

We again advised the Committee that the men who had quit could not be reinstated. Following which, Mr. Durkin reminded me that the Committee had simply come in to discuss the matter and that I had in effect told them "to go to Hell."

An attempt was made to correct this impression, but Mr. Whitlow then stated that the Committee had asked nothing from the Company; the Committee did not ask that these men be reinstated; but the Committee conferred with us simply to see what suggestions we had to offer, and the Company did not have a single suggestion. Therefore, there was nothing further to discuss.

Mr. Barkdoll agreed with Mr. Whitlow that nothing further could be accomplished.

Board's Exhibit No. 60.

Mr. Vickers stated that unless a settlement was effected, the picket lines would be continued indefinitely because the striking workmen were on relief.

Mr. Barkdoll again outlined conditions prior to the strike, particularly those which existed at the Cole Shaft, and reiterated that the feeling between the two groups was too great for the Company to reinstate any of the strikers.

The Committee expressed regret that their efforts had been unsuccessful and Mr. Durkin stated that it was evident that the Phelps Dodge Corporation did not intend to meet the men half way, but expected to continue their campaign of intimidation and coercion which has been prevalent for the past two years in the Warren District.

I would say that the Committee did not expect to secure favorable results; that the majority of the Committee felt they were properly received; that the Committee knew that they had a hopeless case to plead and did all they could to secure some concession for the strikers.

I would also say that Messrs. Durkin and Whitlow are rather bitter and antagonistic towards the Corporation; whereas, Messrs. Vickers, Broughton and Holohan realized the true situation and were simply doing what they could to make a good case for the Union.

Yours very truly,

(Signed) H. C. Henrie

HCH:P

Board's Exhibit No. 61.

COPY

August 27, 1935.

Air Mail

Mr. Louis S. Cates, President
Phelps Dodge Corporation
40 Wall Street
New York, N. Y.

Dear Mr. Cates:

Herewith three copies of letter from Mr. Henrie reporting on conference with committee representing Bisbee Miners Union, held Friday, August 23rd.

Yours very truly,

P. G. Beckett
Vice-President and
General Manager

By

JHD/d
Enc.
(Aug. 24, 1935)

Board's Exhibit No. 61.

COPY

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH, MINES DIVISION
BISBEE, ARIZONA

AUGUST 24, 1935

MR. P. G. BECKETT,
Vice President and General Manager,
PHELPS DODGE CORPORATION,
Douglas, Arizona.

Memorandum Covering Conference
with a Committee Representing Bisbee Miners' Union
Held Friday, August 23, 1935

DEAR MR. BECKETT:

A conference was held with a Committee representing the Bisbee Miners' Union, Friday, August 23rd, at 2:30 p. m.

Messrs. William Day, Dave Lytle and A. B. Potter composed the Committee representing the Miners' Union.

Mr. Day, President of the local Union, stated he had requested this conference since he believed that by talking a few matters over, the present strike might be settled.

Mr. Day then explained that just prior to the strike, six or seven men employed at the Cole Shaft had been discharged. These cases had never been taken up by the local Union and he felt that a fair investigation, made by a joint committee of some kind, would show that some of the men who were discharged were entitled to reinstatement.

I advised the Committee that the men who had been discharged should have taken their cases up at the time, instead of calling a strike.

Mr. Day stated it probably would have been better to have done that, but it was not done. A strike had been called,

but he still felt that these cases should be reviewed by an impartial committee.

I advised Mr. Day that the Company had nothing to arbitrate on the discharge cases referred to. Conditions which existed at the Cole just prior to the discharge of these men were explained to the Committee, and the reason why these men were discharged was also explained.

Mr. Potter then inquired what the Company could do to settle the present trouble, and stated that if the men who still remained in the District were put back to work, the strike could be settled.

I advised the Committee that two conferences had been held on this matter—one with a Committee composed of representatives of the State Federation of Labor; the other with representatives from the local Union and Dr. Nylander. The position of the Company as outlined in the two former conferences had not changed, and there was nothing new to add on the subject.

Mr. Lytle inquired as to whether the Company representatives had stated that they would not reinstate six or eight of the men who were at present out on strike.

Mr. Lytle was advised that no such statement had been made, and that the position of the Company on this matter was exactly the same as outlined in the previous conferences.

The Committee then decided there was nothing further to discuss and the meeting adjourned.

Yours very truly,

(Signed) H. C. Henrie
Assistant
General Superintendent.

HCH:P

Board's Exhibit No. 61.

August 26, 1935

The Bisbee Miners' Union, on Saturday, August 24th, voted to terminate the present strike.

The vote, which was by secret ballot, resulted in thirty votes for terminating the strike and ten votes for continuing.

We may experience a little difficulty from some of the men who will seek reinstatement, since I am advised that the Officers of the Union told their members at Saturday night's meeting that many of them would be re-employed by the Company.

The local Union had advised the International Officers that the strike has been terminated.

Board's Exhibit No. 62.

COPY

July 14, 1937

Air Mail
Mr. L. S. Cates, President,
Phelps Dodge Corporation,
40 Wall Street,
New York, N. Y.

Dear Mr. Cates:

Yesterday, Tuesday, near the entrance to the Junction and Campbell Mines were groups of C. I. O. distributing hand-bills, a sample of which is enclosed. Some of these distributors were former employees of Phelps Dodge who went out on strike in 1935 and were subsequently employed by the Shattuck-Denn. Whether any outside organizers were present has not yet been determined.

The incident in itself is unimportant except that it shows a change in tactics. While literature of a similar nature has been previously distributed in the Bisbee District, this marks the first time since 1935 that they have attempted solicitation on or adjoining Phelps Dodge property. The thought occurs that the C. I. O. is attempting a "Ford Demonstruction" in the hope that we will counter with some aggressive measures which would give them a wonderful opportunity to cry "Oppression" and appeal to the N. L. R. B. for a hearing, which would be granted without a shadow of doubt. We have instructed our watchmen to ignore these groups as long as they stay outside the company fenced property and are cautioning the employees to likewise ignore them. This, I think, is the most effective measure and will be our present policy if the C. I. O. continues their propaganda.

We are hopeful that any open conflict can be avoided but the situation in the District is such that a clash between the two groups might occur at any time. I was also told, confidentially, that a showdown is inevitable between the

Board's Exhibit No. 62.

Union and Shattuck-Denn. The 3rd of July night shift was turned back at the collar of the Denn Shaft by the leaders and this and other acts indicate that the Union may at any time insist upon a closed shop with check-off which I am told will not be granted.

I am not alarmed over this latest move but am simply passing it on for your information.

Yours very truly,

General Manager.

HML-B
Encl.

COPY

July 17, 1937

Air Mail

Mr. L. S. Cates, President,
Phelps Dodge Corporation,
40 Wall Street,
New York, N. Y.

Dear Mr. Cates:

I am enclosing herewith a copy of the latest handbill passed out at the gates of the Junction and Campbell shafts, yesterday, Friday afternoon. Shuper, state organizer for C. I. O., is in charge of these men who again resumed distribution of this literature. About eight men were stationed near the Junction gate and four at the Campbell.

We will continue our policy of ignoring their presence as long as they stay outside the property fence, and will attempt to have the men and authorities do likewise. As before explained, it is so very evident the objective they are asking that we are determined not to play into their hands.

Yours very truly,

General Manager.

Board's Exhibit No. 63.

COPY

JUNE 25, 1935

AIR MAIL
MR. LOUIS S. CATES, President
PHELPS DODGE CORPORATION
40 Wall Street
New York, N. Y.

DEAR MR. CATES:

As I wired you this morning, there was a little mixup at the Junction gate this morning in which Smith, one of the leaders of the union got a shot in the shoulder from one of our watchmen at the gate. The early information that I had when I wired you as to the head watchman being struck was incorrect. What actually happened was that, as has been the practice for the past week or so the strikers on the picket line have on several occasions attempted to make a rush towards the gate and to get through. At the end of last week things were getting very quiet and Vic Smith, who has been prominent throughout these union activities for the past year in Bisbee, showed up from Ft. Huachuca where he had been; and this morning was doing a lot of noisy talking and inciting a small bunch of his followers to make a rush for the gate. Reifsnider and the head watchman who were at the gate repeatedly told the picket line to get back from the gate. Smith, however, with another striker called Slaughter shouted to the men behind them to follow and rushed at Reifsnider with knives, and one of our watchmen at the gate winged Smith in the shoulder. He has since been taken to the County Hospital where to date it does not look like a very serious matter for him, as the bullet has been extracted satisfactorily. The sheriff and two deputies were reasonably close to the scene of the incident.

Board's Exhibit No. 63.

I understand that the strike leaders this morning went to the sheriff and the County Attorney and told them that from now on the picketing was going to be peaceful and that the rough stuff would be cut out. But in a situation like this it is pretty hard to forecast what may or will happen, regardless of what people say. The men that are working are getting badly fed up with this small crowd of strikers and unemployed who boo them and abuse them as they go through the gates coming on and off shift and their patience may soon get exhausted and they may proceed to start something with the union men. The sheriff and his department have been highly cooperative from start to finish but they appear to rather be willing to let a situation arise where the workers, goaded into doing something, will clean up the others.

The strikers are all being given relief; some have moved out of the district to Ft. Huachuca where they have obtained work with contractors, and actually I do not believe there are so many left around Bisbee; but they make up in noise what they lack in numbers, and the men out of work and their wives and children increase the numbers on the picket line. Apparently the bad feeling is not so much between the union men and the non-union as between the union men who went on strike and the membership of the Mine, Mill and Smeltermen's Union who have remained on the job. The bitterness lies there, and it is this membership of the union that is still working that the strikers are trying to get out.

As regards the effect of the strike on the operations, the situation is about as follows: It looks as though we will be a full million pounds short in our production in June from the estimate, i. e., not over 4,000,000 pounds compared with our quota of 5,000,000. Or taking the last three months, namely April, May and June, we will be about half a million pounds short, seeing that we overproduced in April. Also our development and exploration work will show a considerable shortage amounting probably to a thousand feet. This

Board's Exhibit No. 63.

is not serious in itself because we can pick it up very easily later on in the year. It is, however, making us a little short of waste filling for our stopes and we will try to increase it just as soon as we can so as not to get the stopes in bad shape. You will, I know, realize that the mere fact that we have had no great total shortage in men since the strike started does not mean that these men have been on the same job as formerly, because of course this has not been the case; we have had to put a lot of special men on watching and miscellaneous jobs around the Junction and Campbell yards connected with protective measures and therefore we have not been able to keep a full complement of men in the stopes and on development work. But to date this hasn't been a serious matter. It will permit us to give a quarter of a million pounds of the Bisbee production this month to United Verde Branch, as we are also down on our smelter production because of more furnace repair trouble than anticipated.

Yours very truly,

Vice-President and
General Manager.

PGB/d

Board's Exhibit No. 64.

COPY

JUNE 11, 1935.

AIR MAIL

MR. LOUIS S. CATES, President,
PHELPS DODGE CORPORATION,
40 Wall Street,
New York, N. Y.

DEAR MR. CATES:

Herewith are three copies of letter from Mr. Henrie, reporting on the causes of the strike at Bisbee and the progress of the strike to date.

Very truly yours,

P. G. BROKETT,
Vice-President and
General Manager

By

JHD-B
Encls. 3
(Letter from HCH to PGB 6/10/35)

Board's Exhibit No. 64.

COPY

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH, MINES DIVISION
BISBEE, ARIZONA

JUNE 10, 1935

MR. P. G. BECKETT,
Vice President and General Manager,
PHELPS DODGE CORPORATION,
Douglas, Arizona.

DEAR MR. BECKETT:

During the period June 3rd to June 6th, inclusive, certain employees at the Cole shaft, who were members of the Mine, Mill and Smelter Workers' Union, started a campaign of intimidation directed against the non-Union employees working at this shaft.

We ascertained that certain Union employees were intimidating the non-Union group in the changeroom, around the shaft and at their various working places underground. Certain of the Union employees became so abusive and threatening that it became a question as to whether the Union group or the Company was going to run this Division.

On the evening of June 5th, the intimidation campaign was carried to a point where the non-Union group were not allowed to change after shift in the changeroom.

On June 6th, a non-Union employee by the name of Eric Wahlgreen was attacked in Bisbee and beaten up by some of the Unionists. As a result, eight employees of the Cole shaft were discharged during the afternoon of June 6th for "intimidation and coercion on the job." The eight men involved were Messrs: William Day, Vivian Crandall, Levi Crandall, J. T. Woods, John H. Lutcavich, Arthur Hall, W. E. Hawkins and Jack Cornet.

Board's Exhibit No. 64.

Mr. Dave Pierce, Editor of the Cochise County Labor News, called a special meeting of the Bisbee Miners' Union the evening of June 7th. Approximately ten or twelve men attended this meeting. Mr. Pierce wired officials of the Mine, Mill and Smelter Workers' organization for permission to declare a strike.

Members of the local Union were not given an opportunity to vote on the question as to whether or not they would strike.

The regular meeting of the Union held Saturday evening, June 8th, was attended by sixty members. The membership was divided into two factions—one faction favoring a strike; the other group opposing it.

Mr. Hansen, acting as Chairman of the meeting, announced that he had secured permission from the International Officers to declare a strike and a strike was hereby declared.

Following this announcement, a number of the members of the Local left the hall and refused to participate in further discussion.

Handbills were distributed throughout the district announcing that the Mine, Mill and Smelter Workers' Union had declared a strike against the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, and Lessees of the Company.

The Management of the Company was not advised by the Union that a strike was to be declared, nor has the Management been advised relative to the demands or grievances of the Union.

On June 10th, picket lines were established at the gates leading to the Campbell and Junction shafts, and also in the vicinity of the Cole shaft.

Approximately sixty employees failed to report for work on day shift this morning.

A large number of unemployed are present in the picket lines.

Board's Exhibit No. 64.

Public sympathy throughout the District is against the strike action.

At the present time, the strike plan of the Union appears to be a complete flop, and it is doubtful if the Union can secure enough support to continue the strike beyond a few days.

Yours very truly,

(Signed) H. C. HENRIE

HCH:P

Board's Exhibit No. 65.

COPIES OF WESTERN UNION TELEGRAMS

DOUGLAS ARIZONA AUGUST 25, 1935

L S CATES PRESIDENT
PHELPS DODGE CORPORATION
40 WALL STREET
NEW YORK N Y

BISBEE MINERS UNION VOTED LAST NIGHT TO CALL OFF STRIKE VOTE CARRIED FORTY TO TEN

P. G. BECKETT

(CHG PHELPS DODGE CORPORATION
OFFICE OF GENERAL MANAGER)

DOUGLAS ARIZONA AUGUST 25 1935

P G BECKETT
NEPTUNE BEACH APARTMENTS
6663 NEPTUNE PLACE
LA JOLLA CALIFORNIA

BISBEE MINERS UNION VOTED LAST NIGHT TO CALL OFF STRIKE VOTE CARRIED FORTY TO TEN AM ADVISING CATES TELEGRAM TEN

J. H. DAVIS

(CHG PHELPS DODGE CORPORATION
(OFFICE OF GENERAL MANAGER)

Board's Exhibit No. 66.

COPY

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH, MINES DIVISION
BISBEE, ARIZONA

JUNE 5, 1937

MR. H. M. LAVENDER, General Manager
PHELPS DODGE CORPORATION
Douglas, Arizona

DEAR MR. LAVENDER:

Enclosed herewith you will find two copies of a letter which I have just received from Dr. Nylander. Also attached is a copy of a letter which I have just sent to Mr. Kitchel.

As yet, I do not know the details of the various charges which have been made. You, of course, are acquainted with the men mentioned whom we are charged of having discriminated against regarding employment. It is possible that all of the charges center around activities of several years ago and I do not believe any one of the charges is warranted or true.

Mr. Kitchel is tied up on an important Jerome matter next Tuesday. Unless we decide to the contrary, I shall acknowledge Nylander's letter Monday, stating that it has just been received, and we will answer his communication officially in the near future.

In order to ascertain, if possible, just what is embodied in the various charges, I shall probably have to talk with Nylander and some other people in Los Angeles, and shall probably leave here Tuesday afternoon. If it seems advisable, after discussing the matter with Kitchel, I may take him with me.

Board's Exhibit No. 66.

I believe it would be desirable to keep Nylander's letter rather confidential until we have had an opportunity of ascertaining just what evidence Nylander has. I would assume from this communication that Mr. Shupper has found it rather difficult to make such progress in the District and he is now attempting to secure assistance from the Labor Board; all of which means we shall probably have to defend ourselves against some trumped up testimony and charges. However, until we know more about the whole matter, there is not much that we can do or say.

Yours very truly,

(Signed) H. C. HENRIE.

HCH:P
Encls.

Board's Exhibit No. 67.

COPY

JUNE 15, 1937.

MR. L. S. CATES, President,
PHELPS DODGE CORPORATION,
40 Wall Street,
New York, N. Y.

DEAR MR. CATES:

Enclosed herewith please find a copy of a letter from Mr. Henrie relative to his visit in Los Angeles where he contacted Dr. Nylander, Director of the Regional Labor Board.

Henrie's letter is self-explanatory and probably hits the nail on the head when he thinks that Nylander bears considerable malice towards the Company as result of the 1935 strike trouble and settlement. We are convinced that the Labor Board has no justification for the charges made, but at the same time we do anticipate that they will go as far as possible on these and any other trumped up charges that can be found.

Very truly yours,

General Manager

HML-B
Encl.
(cc HCH's letter 6/11/37)

Board's Exhibit No. 67.

COPY

PHELPS DODGE CORPORATION
COPPER QUEEN BRANCH, MINES DIVISION
BISBEE, ARIZONA

JUNE 11, 1937

MR. H. M. LAVENDER, General Manager
PHELPS DODGE CORPORATION
Douglas, Arizona

DEAR MR. LAVENDER:

I contacted Dr. Nylander, Director of the Regional Labor Board, at his office June 9, and discussed with him the charges which were filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30, against the Mines Division.

We denied the truth of all the charges listed in the complaint. My guess is that most of the information covers the period prior to the strike in 1935.

Nylander was advised that when the Wagner Act was passed in 1935, the employees of the Company were advised that the Company intended to comply with the law in all respects. In regard to the charge that the Company has discriminated in regard to hiring employees by refusing employment to certain individuals, the records of some of these men were discussed and he admitted that apparently they are weak cases.

Nylander did not know that the old Representation Plan had been abandoned and that a new labor organization was formed by the employees. This information changed some of his ideas regarding our set-up.

Nylander finally stated that since these charges had been filed, he would have to investigate them, however, instead of holding a hearing on the matter at this time, he would

send an investigator by the name of Pursinger, who is a young lawyer attached to his office, to Bisbee, June 27, to investigate the entire matter.

Following Mr. Pursinger's report, it would be left to the National Labor Relations Board to decide whether a hearing should be held or not.

Pursinger, who was present during the interview, stated that two or three days would be required to make the investigation and his report would not be available for fifteen or twenty days after that date. Since the Labor Board docket is crowded, it is doubtful if a hearing could be held prior to September 1.

I think our visit convinced Nylander that the Union does not have much of a case. From other sources I ascertained that Nylander is dissatisfied with the outcome of the 1935 matter and would like, if possible, to even up matters with the Company.

Nylander asked me if the Company would employ the men mentioned in the discrimination charge. I advised him that the Company would not. It was agreed that we would write him fully on these cases.

Yours very truly,

(Signed) H. C. HENRIE

HCH:P

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation; *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

Supplemental Stipulation.

As a supplement to the stipulation heretofore entered into for the purpose of the hearing in the above entitled case, the following facts are hereby stipulated and agreed to by and between the attorney for the National Labor Relations Board and the attorneys for respondent, Phelps Dodge Corporation:

(1) During the years 1936 and 1937 respondent purchased from El Paso Natural Gas Company the following amounts of natural gas which were transported by pipeline from the State of New Mexico to the State of Arizona and used by respondent in its mining and smelting operations within the State of Arizona, as follows:

1936

Destination	*Cubic Feet*
New Cornelia Branch	66,422,000
Copper Queen Branch, Mines Division	593,347,000
Copper Queen Branch, Smelter Division	3,493,281,000

Supplemental Stipulation.

1937

Destination	*Cubic Feet*
New Cornelia Branch	1,955,093,000
Copper Queen Branch, Mines Division	698,959,000
Copper Queen Branch, Smelter Division	4,477,263,000

(2) During the years 1936 and 1937 respondent purchased from Gallup American Coal Company 121,102 and 141,284 tons of coal, respectively, which were shipped from the State of New Mexico to the State of Arizona and used by respondent at its United Verde Branch, Smelter Division, at Clarkdale, Arizona.

(3) During the years 1936 and 1937 respondent purchased from various sources the following amounts of fuel oil which were shipped from various States other than the State of Arizona into the State of Arizona and used by respondent in its mining and smelting operations within the State of Arizona, as follows:

1936

Destination	*Barrels*
New Cornelia Branch	394,575
Copper Queen Branch, Mines Division	22,841
United Verde Branch, Smelter Division	26,722
Morenci Branch, Mines Division	4,382

1937

New Cornelia Branch	177,608
Copper Queen Branch, Mines Division	37,177
United Verde Branch, Smelter Division	53,064
Morenci Branch, Mines Division.....	35,534
Morenci Branch, Smelter Division.....	34,323

(4) During the years 1935 and 1936 Nichols Copper Company sold very substantial quantities of refined copper

to purchasers other than Phelps Dodge Copper Products Corporation.

It is further stipulated and agreed to that the inclusion of the foregoing facts as evidence in the above entitled case is objected to by respondent on the grounds that the same are irrelevant, incompetent and immaterial in that they fail to constitute evidence on the issue of whether or not the unfair labor practices, in which respondent is alleged in the complaint to have engaged, are such as to be deemed to be "affecting commerce" as that term is defined in Section 2 (7) of the National Labor Relations Act, or on the issue of whether or not the mining operations at respondent's Copper Queen Branch, Mines Division, constitute interstate commerce.

It is further stipulated and agreed to that if the Trial Examiner who presided at the hearing in the above entitled case should overrule the foregoing objections and admit the facts contained herein in evidence respondent shall be allowed an exception to such ruling, otherwise this stipulation to be of no force or effect whatsoever.

Dated this 16th day of February, 1938.

NATIONAL LABOR RELATIONS BOARD,
By DAVID PERSINGER
Attorney

PHELPS DODGE CORPORATION, respondent,
By ELLINWOOD & ROSS
WILLIAM A. EVANS
DENISON KITCHEL
Attorneys

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

Respondent's Motions to Dismiss and Supporting Memorandum.

At the close of the Board's case and again at the conclusion of the taking of testimony in the above-entitled matter, respondent made several motions to dismiss, all of which were directed to the evidence in the record. These motions were severally denied and it is the purpose of respondent to renew those motions, to make additional motions, and to state respondent's position with respect to each of them.

I.

CASES INVOLVING CLEAR FAILURE OF PROOF.

Respondent moves to dismiss as to the following individuals: William Dougherty, Clyde Bigelow, Milton Wynn, and Richard Johnson. It is the position of respondent that the Board has clearly failed to establish a case with respect to these persons, and that there is insufficient evidence in the record upon which a finding of discrimination could be predicated. On the contrary, the evidence is clear and convincing to the effect that these men were not members of the union either at the time of the alleged discrimination or

at the time of the walk-out on June 10, 1935; that they were not in the picket line at any time; and that respondent had no reason to believe that they were members of the union at any time. In addition to the foregoing facts, with respect to William Dougherty the evidence to the effect that he has not worked for respondent at any time since October 25, 1934, and hence did not walk-out on June 10, 1935, is uncontradicted, and with respect to Richard Johnson the undisputed facts are that Johnson has never been employed by respondent; that he did not become a member of the union until after he went to work for the Shattuck-Denn Mining Company in April, 1936; and that he has never made application for employment with respondent since that time.

II.

Cases Involving Unemployables.

Respondent moves to dismiss as to the following individuals: Clyde Bigelow, Henry Waters, H. D. Edge and J. M. Morris. It is the position of respondent that, as shown by their own testimony, these persons are suffering from an affliction of the lungs, commonly known as silicosis, and are unemployable. The testimony of M. A. Bateman to the effect that all persons must undergo a physical examination prior to obtaining employment with respondent and that respondent rejects all applicants whose lungs are found to be defective is uncontradicted.

Respondent takes this same position with respect to William Dougherty. Dougherty has not been employed by respondent at any time since October 25 1934. He made his first and only application for reemployment on or about January 15, 1937. The testimony is clear and convincing to the effect that Dougherty was rejected for employment because of his physical condition.

III.

H. J. Montgomery.

Respondent moves to dismiss as to H. J. Montgomery upon the ground that the evidence is clear and convincing to the effect that the alleged failure or refusal to "reinstate" Montgomery was based upon and was fully justified by his unsatisfactory service record.

IV.

Cases Involving Persons Not Employed on June 10, 1935.

Respondent moves to dismiss as to the following individuals: William Dougherty, William Guess, William Day, Levi Crandall, John P. Foley, Vernon Curtis, Grover Cornett, and Richard Johnson. From their own testimony, it has been established that none of these persons was an employee of respondent on, immediately prior to, or at any time subsequent to June 10, 1935. It follows, therefore, that they are not employees of respondent under the definition of the term "employee" contained in Section 2 (3) of the National Labor Relations Act, which became effective on July 5, 1935. With respect to Day and Crandall, testimony was elicited by the Board apparently for the purpose of establishing that the discharges of these two men constituted an unfair labor practice upon the part of respondent and of thereby bringing them within the definition referred to above. On that point it is sufficient to state that these two men were discharged on June 6, 1935.

It is clear that these men have not been and are not now employees of respondent as the term "employee" is defined in the Act. It will be readily noted that sections 7 and 8 of the Act are confined exclusively to "employees". The rights guaranteed in Section 7 are guaranteed to "employees" only. Under Section 8 (1) it is made an unfair

labor practice "to interfere with, restrain, or coerce *employees*" in the exercise of those rights. Obviously, no such unfair labor practice could have been committed by respondent with respect to the eight men now under discussion. The labor practice defined in Section 8 (3) of the Act becomes unfair only when it operates to abridge the rights guaranteed to "employees" in Section 7 and clearly there could have been no such unfair labor practice committed by respondent with respect to these eight men. Moreover, it should be noted that there is no evidence in the record to show that the rights of any persons who actually were "employees" of respondent have been in any way abridged by the alleged refusal to "reinstate" these eight individuals whose status as non-employees cannot be disputed.

Section 10 of the Act sets forth the powers of the Board with respect to the prevention of unfair labor practices, and sub-section (c) of Section 10 authorizes the issuance of orders requiring a respondent "to take such affirmative action, including *reinstatement* of *employees* with or without back pay, as will effectuate the policies of this Act". To construe this section as authorizing the Board to order affirmative action such as the giving of employment with or without back pay to persons other than those who are "employees" at the time such order is entered, would render the same unconstitutional and void. Such action would require the making of contracts with persons who, as far as any employment relationship is concerned, would be total strangers to the respondent and would abridge the liberty of contract guaranteed to respondent by the Fifth Amendment to the Constitution of the United States. An order requiring the payment of back pay to such persons, whether or not employment was also required, would deny to respondent its right to a trial by jury under the Seventh Amendment to the Constitution of the United States, and would also operate to deprive respondent of its property without due process of law in contravention of the Fifth Amendment.

Respondent further takes the position that under the express wording of Section 10 (c) of the Act, the Board's authority to order the payment of back pay is limited to cases where "reinstatement" is also ordered.

V.

Cases Involving Persons Who Have Obtained Regular and Substantially Equivalent Employment.

Respondent moves to dismiss as to the following individuals: William Day, Levi Crandall, E. L. Hargus, John Henry Key, George Frazee, John P. Foley, Edward Bowden, Paul Amaro, Wilfred D. Mortenson, Anson Perry Windsor, Grover Windsor, Vernon L. Curtis, Grover Cornett, Martin Vaclav, Monte Reed, Alexander Kalastro, W. H. Bigelow, William H. Windsor, Ellis M. Scales, F. H. Erkkila, Luke Sertich, Merrell Ernest Johnson, William D. Graham, Jesse Edge, Richard Johnson, William E. Sharp, Jr., H. D. Edge, Milton Wynn, P. C. Lytle, Lester F. Bethel, Leonard Guess, Ben H. Stringer, Tom Abedin, Pete D. Caretto, Mike Mihelich, J. M. Morris, Clyde E. Bigelow, and Joe Henry Dunkerson. It is the position of respondent that all of these persons, as shown by their own testimony and the testimony of others, have received regular and substantially equivalent employment and that, even assuming that on, and for sometime after July 5, 1935, they were "employees" of respondent, they have since lost that status. It follows, therefore, that as to those men there can be no unfair labor practice at the present time. It is respondent's contention that any order requiring "reinstatement" of or the payment of back pay to any of these individuals would be beyond the authority granted to the Board under the terms and provisions of the Act and would deny to respondent the rights guaranteed to it by the Fifth and Seventh Amendments to the Constitution of the United States. The reasons set forth in paragraph IV hereof are equally applicable to this contention.

VI.

Status as Employees on July 5, 1935.

Respondent moves to dismiss the complaint in its entirety on the ground that none of the persons listed in Appendix A thereto was, on July 5, 1935, or has been at any time since that date, an "employee" of respondent as defined in Section 2 (3) of the Act. Of the 45 persons involved, the evidence shows that 37 voluntarily left the employ of respondent on June 10, 1935, and the remaining eight were not in the employ of respondent on or immediately prior to that date. It is the position of respondent that this action upon the part of these 37 persons and a few others constituted neither a labor dispute nor a strike. The evidence shows that no strike vote was taken in accordance with the provisions of the Constitution and By-Laws of the International Union of Mine, Mill and Smelter Workers, with which Bisbee Miners Union, Local No. 30, was affiliated. The evidence shows that no notice of an intention to call a strike was ever given to respondent by the union or any of its members. The evidence shows that no demands were made by the union on respondent, the refusal of which could be construed as constituting the basis of a labor dispute between respondent and members of the union. The evidence shows that those voluntarily leaving the employ of respondent on June 10, 1935, constituted less than 10% of the persons employed by respondent on that date. The evidence shows that prior to July 5, 1935, the places of all of those who left on June 10, 1935, had been filled and that respondent's operations were normal. In view of this testimony and upon the basis of the law as it existed prior to the effective date of the National Labor Relations Act, respondent contends that the 37 individuals referred to above had by July 5, 1935, ceased to be employees of respondent in any sense of the word. For the same reasons, respondent contends that there was no labor dispute "current" on July

5, 1935. It follows that respondent could not have engaged in an unfair labor practice with respect to any of these 37 persons. It is respondent's contention that any order requiring "reinstatement" of or the payment of back pay to any of these individuals would be beyond the authority granted to the Board under the terms and provisions of the Act and would deny to respondent the rights guaranteed to it by the Fifth and Seventh Amendments to the Constitution of the United States. The reasons set forth in paragraph IV hereof are equally applicable to this contention.

In addition, respondent contends that any construction of the provisions of the National Labor Relations Act whereby the same would be given a retroactive effect, would, as applied to the evidence in this case, constitute a denial of the due process of law guaranteed to respondent by the Fifth Amendment.

VII.

An Unfair Labor Practice Affecting Commerce.

Respondent moves to dismiss the complaint in its entirety on the ground that the evidence fails to establish any unfair labor practice affecting commerce. Section 10 of the Act empowers the Board "to prevent any person from engaging in any unfair labor practice affecting commerce". As defined in Section 2 (7) "the term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce". There is no testimony to establish or from which it could be inferred that the alleged unfair labor practice was or is "in commerce, or burdening or obstructing commerce or the free flow of commerce". The Board, therefore, must rely upon the proposition that the alleged unfair labor practice is such that it may be considered as "having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of com-

merce". It must be remembered that the alleged unfair labor practice is the failure or refusal on the part of respondent to "reinstate" the persons whose names are listed in Appendix A of the complaint. Respondent submits that there is no evidence upon which there could be based a conclusion that the alleged failure or refusal to "reinstate" these persons has led or tends to lead to any labor dispute. On the contrary, there is an abundance of testimony in the record to the effect that such failure or refusal has neither led or tended to lead to such a result, but that, instead, reinstatement of these men would in fact lead or tend to lead to a dispute with the employees of respondent. In other words, respondent is charged with failure to do an act, the doing of which would bring about the very result for the prevention of which the National Labor Relations Act was enacted and the National Labor Relations Board was created. The Board has failed to establish a case in which the powers given to it in Section 10 of the Act could be brought into play. Those powers are limited to the prevention of unfair labor practice "affecting commerce" and any attempt to exercise them other than in strict conformity with that requirement would be a violation of the Tenth Amendment to the Constitution of the United States.

VIII.

Federal Regulation.

Respondent moves to dismiss the complaint in its entirety upon the ground that the mining operations of respondent's Copper Queen Branch, Mines Division, are not subject to federal regulation. It is the position of respondent that these mining operations are entirely antecedent to commerce and do not come within the regulatory powers conferred on the Congress of the United States by Article I, Section 8 of the Constitution of the United States. Any attempt upon the part of Congress to regulate

these activities of respondent, which are clearly intrastate in character, would constitute a violation of the provisions of the Tenth Amendment to the Constitution of the United States.

IX.

Unfair Labor Practices.

Respondent moves to dismiss the complaint in its entirety on the ground that the Board has failed to prove that respondent has ever, or is now, engaged in an unfair labor practice as defined in sub-divisions (1) and (3) of Section 8 of the National Labor Relations Act. There is no evidence in the record to establish that respondent's alleged failure or refusal to "reinstate" the persons listed in Appendix A of the complaint has at any time operated to interfere with, restrain or coerce respondent's employees in the exercise of the rights guaranteed to them in Section 7 of the Act. (Section 8 (1)). There is no evidence in the record to establish that by such alleged failure or refusal respondent has discriminated against any of its employees "in regard to hire or tenure of employment, or any term or conditions of employment" (Section 8 (3)), and even assuming that there is evidence of such discrimination, there is no evidence in the record to establish that the same was for the purpose of, or did, in fact, operate to "encourage or discourage membership in any labor organization". (Section 8 (3)). The Board having clearly failed to establish these facts which are essential to a finding of an unfair labor practice, respondent respectfully submits that the case should be dismissed.

Respectfully submitted,

Ellinwood & Ross,
William A. Evans,
Denison Kitchel,
Attorneys for Respondent.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION.

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, Respondent, *and* INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

DAVID PERSINGER, ESQ., Los Angeles, California, for the Board;

MESSRS. ELLINWOOD & ROSS by DENISON KITCHEL and WILLIAM A. EVANS, of Phoenix, Arizona, for the Respondent.

Intermediate Report.

Upon charge duly made and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 49 Stat. 449, Towne Nylander, Regional Director, Twenty-first Region, as agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations —Series 1, as amended, Article IV, Section 1, issued its Complaint dated January 10, 1938, against Phelps Dodge Corporation, a corporation, Respondent herein.

The Complaint and Notice of Hearing thereon were duly served the Respondent on January 10, 1938, in accordance with said Rules and Regulations—Series 1, as amended, Article V, Section 1.

The Complaint was amended at the time of the hearing.

Intermediate Report.

The Complaint.

The Complaint, as amended, alleged Respondent to be a New York corporation with principal place of business in New York, New York; that it operates mines at or near Bisbee, Arizona, for the production of various minerals, including copper ore. This mine is known as the Copper Queen Mine. The Respondent also is alleged to operate smelters near Douglas, Arizona, and to conduct mining operations in Arizona, New Mexico, Mexico, and smelting operations in New Mexico and Texas. It is alleged that Respondent transports ore and other minerals from its mines and smelters in interstate commerce to states other than the State or Country of origin of the shipment. Respondent's activities in refining its raw materials, manufacturing them into finished products in New York, New Jersey, Connecticut, Indiana and elsewhere and selling said finished products in interstate commerce are described. The interstate activities of Respondent in operating wholesale and retail mercantile establishments is set forth. These activities of Respondent are carried on by itself or its subsidiaries.

The International Union of Mine, Mill & Smelter Workers, Local No. 30, hereinafter referred to as the Union, is alleged to be a labor organization within the definition of the Act.

Respondent is alleged to have refused to reinstate certain specified individuals employed at the Copper Queen Mine because of their activity in behalf of the Union and said refusal to reinstate is alleged to violate Sections 8 (1), (3), and Section 2, (6) and (7) of the Act.

The Answer.

Thereafter, Respondent filed its Answer admitting the interstate character of its operations and the Union to be a labor organization; but denying that the employees named in the Complaint were discharged in violation of the Act.

Intermediate Report.

HEARING.

Pursuant to Notice of Hearing the undersigned as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing on January 27, 29, 31, February 1, 2 and 3, 1938, at Bisbee, Arizona.

Full opportunity to be heard, to cross-examine witnesses and produce evidence bearing upon the issues was afforded to the parties. Oral arguments were not made by any party. After the close of the hearing, Respondent filed a written Motion to Dismiss and supporting Memorandum with the Trial Examiner.

MOTIONS.

The Board's attorney moved to dismiss the Complaint as to Bert Bethel, T. N. Curtis and McKelvey. This motion was granted.

The Board's attorney moved to conform pleadings to proof in correcting the spelling of names of persons mentioned in the Complaint. This motion was granted. Names are spelled in this Report as set forth in the transcript.

By stipulation of all counsel, the Complaint was amended to include the name of Earl Worden. At the close of taking of testimony, on motion of Respondent, consented to by the Board's attorney, the Complaint as amended as to Earl Worden was dismissed.

At the time of hearing, Respondent's counsel moved to dismiss the Complaint on several grounds. This motion was denied.

On stipulation of all counsel, the Answer, Page 8, Line 2, was amended to change the figure "32" to "31", and the figure "33" to "32".

The written motion of Respondent to dismiss the Complaint, filed with the Trial Examiner after the close of the hearing, has been considered. For reasons set forth herein-

after, the Complaint should be dismissed as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. Said written motion should otherwise be denied.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned, makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT.

I. The Parties.

1. *The Respondent, Phelps Dodge Corporation, a corporation.*

The Respondent is a New York corporation with principal place of business at New York, New York. At all times referred to herein, it operated a mine at Bisbee, Arizona, known as the Copper Queen Mine, for the principal purpose of mining copper ore. Many other minerals are mined on this property.

Respondent's activities are very extensive, including mine operations at other places in the States of Arizona and New Mexico; smelting at Douglas, Arizona, and other places; and shipping the products of its mines and smelters from one point to another in the United States.

Respondent directly or through its subsidiaries manufactures many finished products from the products of its mines and smelters; said finished products being sold by it. Respondent, through a subsidiary, operates mercantile establishments selling various articles of merchandise at both wholesale and retail at Bisbee and Douglas, Arizona, and elsewhere.

The labor dispute referred to herein occurred at Respondent's Copper Queen Mine, Bisbee, Arizona. This mine

has three principal shafts known as the Junction, Cole and Campbell. These shafts are more than 2,500 feet deep. They are connected underground by tunnels at many levels. The mining operations are conducted from these tunnels. The Junction Shaft opens at the surface near Respondent's employment office. The picket line referred to herein was near the surface opening or collar of the Junction Shaft.

2. *The Union, International Union of Mine, Mill & Smelter Workers, Local No. 30.*

The Union was chartered in September, 1933. From June 3, 1935, to August 26, 1935, Respondent had the activities of the Union under surveillance to the extent that Respondent's Assistant General Superintendent of the Copper Queen Mine was able to report to his superior what transpired at the meetings of the Union during that period; (Board's Exhibit Nos. 61, 64).

Respondent discharged certain Union members on June 6, 1935, for their union activity. Because of these discharges, the Union held a meeting on June 7, 1935, at Bisbee, at which time members present voted to strike against the Respondent.

Pursuant to this strike vote, a large majority of the Union members employed by the Respondent at the Copper Queen Mine struck on June 10, 1935. This strike continued until August 24, 1935. Throughout the strike, the Union maintained a picket line in front of the gate to the Junction Shaft.

The Union has among its members, employees of the Shattuck Den Mining Company, Bisbee, Arizona.

The Union is a labor organization within the definition of the Act.

II. Refusal to Reinstate Employees for Union Activity.

Respondent's employees named hereinafter were on strike on July 5, 1935 and continued on strike until August 24, 1935. This strike was the result of Respondent's discharging certain Union members. All of the employees named were members of the Union at all times referred to unless otherwise noted.

In each instance, the employee individually, or through a Committee representing the Union, requested reinstatement from the Respondent after July 5, 1935 particularly on August 9 and 23, 1935, and in each instance this request for reinstatement was refused by Respondent. The reason for this refusal to reinstate was the same in every case, to-wit: That the employee had participated in the strike and had been an active member of the picket line maintained by the Union outside the gate to Respondent's property.

Respondent's determined policy to refuse employment to these men because of their union activity in connection with the strike is reflected in its interoffice correspondence, copies of which appear in the exhibits; (see Board's Exhibits Nos. 59, 60, 61 and 67).

Respondent's employment agent at the time of the strike (who continued in that capacity for several months thereafter) admitted that he had been instructed by his superiors to "go slow" about reinstating the strikers. These instructions were translated by him to mean that he was *not* to reinstate these men. None of them were successful in their efforts in this direction. After Respondent's refusal to reinstate them, several of the employees hereinafter named entered the employ of the Shattuck Den Mining Company at Bisbee, Arizona.

Shattuck Den Mining Company is a comparatively small concern. Until a few months before the trial in this matter, the ventilating system used in this mine was inferior to that used by the Respondent. The air supplied to miners underground was not considered up to the standard required by

the State Agency charged with the regulation of working conditions in the mines. Although several of the employees here under consideration received compensation from the Shattuck Den Mining Company equivalent to or greater than that received by them from Respondent, they all expressed the desire to return to Respondent's employ. Employment by the Respondent is preferable to that by the Shattuck Den Mining Company for the reason that Respondent is a larger, better established organization and can secure to its employees greater regularity and continuity of employment.

By returning to the Respondent, these employees would retain seniority rights which they do not have at the Shattuck Den Mining Company.

It is therefore found that the employees hereinafter named who have been employed by the Shattuck Den Mining Company have not received other regular and substantially equivalent employment to that held by them at the time of Respondent's refusal to reinstate them.

1. *W. M. Day* entered the employ of Calumet & Arizona Mining Company in 1929 and in 1931 when that Company merged with Respondent, was transferred to the Respondent. Day was an early member of the Union, joining in 1934. In June, 1935, he was employed by Respondent as a mucker. He was one of the group of Union members discharged by the Respondent June 6, 1935. His work with the Respondent ceased as a consequence of and in connection with a current labor dispute. During the strike he served upon a Committee of Union members that visited Respondent August 23, 1935 seeking reinstatement of strikers. The efforts of this Committee as well as all other efforts of the Union, or its members, seeking reinstatement were unsuccessful.

Day entered the employment of Shattuck Den Mining Company on August 14, 1936, as an electrician's helper. He was so empolyed at the time of the hearing.

2. *Levi Crandal* entered Respondent's employ February 2, 1927. He was employed by Respondent as a mucking machine operator until January 6, 1935, when, because of his membership in the Union, he was discharged. His discharge and those of other Union members resulted in the strike herein reported. His work with the Respondent ceased as a consequence of and in connection with a current labor dispute. During the strike he served upon a Committee of Union members that visited Respondent's office seeking reinstatement of strikers. The efforts of this Committee, as well as all other efforts of the Union or its members seeking reinstatement were unsuccessful.

Crandal entered the employ of the Shattuck Den Mining Company June 7, 1937, as a miner and was employed in that capacity at the time of the hearing.

He was casually employed elsewhere between July 5, 1935 and June 7, 1937, but not in regular and substantially equivalent employment to that held by him before his discharge by the Respondent on June 6, 1935.

3. *Edgar Lewis Hargus* entered Respondent's employ in 1924. He was working for Respondent immediately before June 10, 1935, when he went on strike. He continued active in the strike and picketing operations for the Union until the latter part of July, 1935. After this time, he was casually employed elsewhere but not in regular and substantially equivalent employment to that held by him with the Respondent before the strike. He was at the time of the hearing employed by the Shattuck Den Mining Company but expressed his desire to return to the Respondent.

4. *John Henry Key* entered Respondent's employment in 1928. He was a raise man and stope man for Respondent when he went out on strike as a member of the Union on June 10, 1935.

He was casually employed elsewhere though not in regular and substantially equivalent employment to that held by him with Respondent before the strike.

In August, 1937, he entered the employ of the Shattuck Den Mining Company and was there employed at the time of the hearing.

5. *George Frazee* entered Respondent's employ in March, 1934. He was employed as a miner for the Respondent on June 10, 1935, when as a member of the Union he went out on strike. He continued on strike and picket duty for the Union after July 5, 1935.

On February 15, 1937, Frazee entered the employment of the Shattuck Den Mining Company and was so employed at the time of the hearing. Before his employment by Shattuck Den Mining Company he had other casual but not substantially equivalent employment to that held by him with Respondent at the time of the strike.

6. *John Patrick Foley* entered the employ of the Calumet & Arizona Mining Company in 1926. He was transferred to the Respondent at the time of the merger of the Calumet & Arizona Mining Company with the Respondent in 1931. He voluntarily left the employment of the Respondent in January, 1935.

On June 1, 1935, he applied to the Respondent for work and on or about June 4, 1935, he was refused employment by the Respondent. He was then a member of the Union and after the strike was called he participated in the picket line. After the strike he was employed by the Shattuck Den Mining Company.

This man was not an employee of the Respondent at the time of the commencement of the strike nor on July 5, 1935, nor at any time thereafter. The allegations of the Complaint as to him should be dismissed.

7. *Edward Bowden* entered Respondent's employ in 1920. His employment was not continuous until 1927 but

from that date until June 10, 1935, he was continuously employed by Respondent as a miner. He was a striker engaged in picketing Respondent's property in behalf of the Union before and after July 6, 1935. He entered the employment of the Shattuck Den Mining Company as a timberman in March, 1937, and was so employed at the time of the hearing.

Between August 25, 1935, and March, 1937, he was casually employed elsewhere but not in regular and substantially equivalent employment to that held by him with Respondent at the time of the strike.

8. *Paul Amaro* entered Respondent's employment in March, 1934, as a miner and remained in that capacity with Respondent thereafter until he went on strike July 10, 1935. As a member of the Union, he was active in the picket line throughout the entire strike.

In June, 1936, he entered the employment of Shattuck Den Mining Company as a miner and was employed by said Company at the time of the hearing. Between the termination of the strike and June, 1936, he had other casual employment but not substantially equivalent to that held by him at the time of the strike.

9. *Wilford Davis Mortenson* entered Respondent's employment in July, 1929, and after seven or eight months left Respondent. He returned to Respondent April 1, 1934, and continued with the Respondent until the time of the strike. He was employed by the Respondent as a miner June 10, 1935, when he went on strike and thereafter and until August, 1935, was active as a picket in behalf of the Union.

In August, 1936, he entered the employment of the Shattuck Den Mining Company as a miner and was there employed at the time of the hearing.

During the period August, 1935, to August, 1936, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent.

10. *Anson Perry Windsor* entered Respondent's employment June, 1934, as a mucker. He was on the sick list receiving insurance payments by reason of employment with the Respondent on June 10, 1935, when, as a member of the Union, he went on strike. About July 15, 1935, he was sufficiently recovered to resume his customary work with the Respondent. He served on the picket line after July 5, 1935, until approximately the termination of the strike.

On November 23, 1936, he was employed by Shattuck Den Mining Company as a miner and continued in such capacity to the time of the hearing. Between the termination of the strike and November 23, 1936, he had other casual employment but not substantially equivalent to that held with Respondent.

11. *Emery Adelbert Curtis* entered the employment of the Calumet & Arizona Mining Company in 1925. At the time of the merger in 1931, he was transferred to Respondent's pay roll and was employed by Respondent as a powder man at the time of the strike.

On June 10, 1935, he went on strike as a member of the Union and served on the picket line thereafter until about August 13, 1935.

Since the termination of the strike he has had other casual employment but not substantially equivalent to that had with Respondent.

12. *William Daugherty* entered Respondent's employment in 1931. He worked for Respondent at different times thereafter but was not employed by Respondent after 1934. At the time of the strike he was not a member of the Union in good standing. He did not participate in the strike or in the picket line.

In January, 1937, he applied to the Respondent for employment but was then refused employment. Daugherty testified that at the time of this refusal to employ him, Respondent's employment agent gave him as a reason for this

action by Respondent that Daugherty had called some other employees "scabs". Respondent contended that Daugherty was refused employment because of his physical condition. No act of discrimination is established against Respondent by its refusal to employ this man. The Complaint as to him should be dismissed.

13. *Tom Abedin* entered the employ of the Calumet & Arizona Mining Company in 1918. He worked for that corporation until 1923. He later returned to the Calumet & Arizona Mining Company and was transferred to Respondent's pay roll at the time of the merger in 1931. He was laid off on two occasions after 1931 but was continuously employed by Respondent from February 12, 1934, to the date of the strike. He struck as a member of the Union June 10, 1935, and was active on the picket line for the Union thereafter until August 22, 1935.

He was casually employed elsewhere after the strike but not in substantially similar employment as that with Respondent.

14. *Grover D. Windsor* entered Respondent's employ June 8, 1934, and was employed operating a mucking machine on June 10, 1935, when as a member of the Union he went on strike. He remained on the picket line until June 26, 1935.

In November, 1936, he entered the employ of the Shattuck Den Mining Company.

Between June 26, 1935, and November, 1936, he had casual employment elsewhere but not substantially equivalent to that had by him with Respondent.

Although this employee was not on the picket line after June 26, 1935, the reason for his not being so active in behalf of the Union after this date, was that, on said date and until the termination of the strike, he was confined to the County Jail on the complaint of the Respondent or its agents.

After July 5, 1935, he was refused employment by the Respondent because he was a member of the Union after July 5, 1935, and because of the aid he rendered his fellow Union employees in prosecuting the strike.

15. *Joe Henry Dunkerson* entered Respondent's employ in 1931 and was employed by Respondent as a tool nipper on June 10, 1935, when, as a member of the Union, he went on strike. He was active in the picket line after July 5, 1935. He was casually employed by others after the strike but not at substantially equivalent employment as that with Respondent.

16. *Vernon Dell Curtis* was employed by the Respondent before June 14, 1934, when he was discharged. He was not an employee of Respondent when the strike commenced on June 10, 1935, but he was a member of the Union and as such he served in the picket line. Thereafter and until the termination of the strike he was so engaged.

After the strike, he was refused employment by Respondent for the reason that he had participated in union activities after July 5, 1935. He was casually employed elsewhere after the strike but not in substantially equivalent employment to that had by him with Respondent.

As this man was not an employee of the Respondent when the strike commenced or at any time thereafter the allegations of the Complaint as to him should be dismissed.

17. *Grover Cornett* was originally employed by Respondent in 1929. He was laid off February 19, 1930, and on June 7, 1935, was rehired to go to work on June 10, 1935. He did not go to work on that date but went on strike as a member of the Union. The following day, he commenced serving on the picket line. He continued in this capacity until August 15, 1935.

He entered the employ of the Shattuck Den Mining Company in May, 1936, and was there employed at the time of the hearing.

As it does not appear that this man was actively employed by Respondent when he went on strike, or at any time thereafter, the allegations of the Complaint as to him should be dismissed.

18. *Martin Vaclav* entered the employment of the Calumet & Arizona Mining Company in 1927. At the time of the merger in 1931, he was transferred to the Respondent's pay roll. He was employed by Respondent as a miner on June 10, 1935, when he went on strike as a member of the Union. He served on the picket line thereafter until the latter part of July, 1935.

He entered the employment of the Shattuck Den Mining Company in January, 1937, and remained there until May, 1937. In October, 1937, he reentered the employment of the Shattuck Den Mining Company and continued there until the time of the hearing in this matter. After the termination of the strike he had other casual employment but none substantially equivalent to that with Respondent.

19. *Monte Reed* entered Respondent's employment in 1933 and continued until June 11, 1935, when he went on strike. He joined the picket line that day and continued in that activity until June 26, 1935.

He entered the employment of Shattuck Den Mining Company August 14, 1936, and continued there until the time of the hearing in this matter.

After the termination of the strike, this employee had other casual employment but not substantially equivalent to that with Respondent.

Although this employee was not on the picket line after June 26, 1935, the reason for his not being so active in behalf of the Union was that on said date and until the termination of the strike he was confined in the County Jail on the complaint of Respondent or its agents.

After July 5, 1935, he was refused employment by the Respondent because he was a member of the Union after

said date and because of the aid he rendered his fellow Union members in prosecuting the strike.

20. *Clyde Bigelow* entered Respondent's employ in 1931. He worked for short periods until 1933, after which time he was continuously employed by Respondent as a miner until June 10, 1935, when he went on strike. He was not a member of the Union at the time of the strike nor did he participate in the picket line activities of the Union.

After the termination of the strike, he was refused employment by the Respondent because he had participated in the strike and thereby had assisted the Union after July 5, 1935.

After the termination of the strike, he secured casual employment elsewhere but said employment was not substantially equivalent to that held by him with Respondent at the time of the strike.

In June, 1936, this employee was examined for a job as a miner with the Shattuck Den Mining Company. He was rejected because his physical examination at that time disclosed that he had silicocis.

It cannot be presumed that this employee would have been capable of performing his duties as a miner for the Respondent after June, 1936. It will therefore be recommended that Respondent be not required to offer him reemployment or back pay after June 1, 1936.

21. *Milton Wynn* entered Respondent's employ in 1925. He worked for a short period thereafter, left Respondent and returned in 1934. He was continuously employed by Respondent after 1934 until June 10, 1935, as a gunite machine operator.

On June 10, 1935, he went on strike as a member of the Union. He did not take part in the picketing. He was employed casually elsewhere after the termination of the strike but not in substantially equivalent employment to that held with Respondent at the time of the strike.

He was refused reinstatement by the Respondent after the termination of the strike because of his being on strike and his membership in the Union after July 5, 1935.

22. *Alexander Kalastro* entered Respondent's employ in August, 1934. He was employed by Respondent as a swamper on June 12, 1935, when he went on strike. He served in the picket line for one day, on June 12, 1935.

After July 5, 1935, he was refused employment by Respondent because of his striking and the assistance he thereby gave the Union. Shortly after he went on strike, he received other casual employment not substantially equivalent to that held by him with Respondent at the time he went on strike.

He entered the employ of Shattuck Den Mining Company as a miner in February, 1937, and was employed by that Company continuously thereafter until some time in January, 1938.

23. *W. H. Bigelow* entered Respondent's employ in 1908. He was not employed continuously thereafter but on several occasions worked for Respondent until the Spring of 1934, when he commenced continuous employment as a miner. He went out on strike June 10, 1935, and, as a member of the Union, participated in the picket line thereafter. He was in the picket line after July 5, 1935.

He entered the employ of Shattuck Den Mining Company in December, 1936, and was there employed at the time of the hearing. He had other casual employment between the termination of the strike and the time he entered the employ of Shattuck Den Mining Company but not substantially equivalent to that held with Respondent at the time of the strike.

24. *William Windsor* entered Respondent's employ in 1925. He did not work continuously with Respondent, however, until September, 1933, after which he was continuously employed by Respondent.

On June 10, 1935, he went out on strike as a member of the Union. He was then employed as a miner. He was active in the picket line from the commencement of the strike until about July 15, 1935. He entered the employ of Shattuck Den Mining Company on December 2, 1936, as a mucker. He was so employed at the time of the hearing.

Between the termination of the strike and the date of his entering the employment of the Shattuck Den Mining Company he was casually employed elsewhere but not in substantially equivalent employment to that held by him with Respondent at the time of the strike.

25. *Ellis Meran Scales* entered Respondent's employ in February, 1926. He was continuously employed until June 10, 1935, when, as a member of the Union, he went out on strike. At the time of the strike he was employed as a motorman. He was active on the picket line from the commencement of the strike until August 24, 1935.

He entered the employ of the Shattuck Den Mining Company in October, 1936, and was employed as a Finley operator at the time of the hearing. He had casual employment elsewhere between the termination of the strike and the time he entered the employment of the Shattuck Den Mining Company but not substantially similar employment to that with Respondent at the time of the strike.

26. *Frank Erkkila* entered Respondent's employ June 1, 1934. He was employed as a mucker June 10, 1935, when he went out on strike as a member of the Union. He was active on the picket line from the commencement of the strike until the latter part of August, 1935.

He entered the employ of Shattuck Den Mining Company in January, 1936, and was employed by that Company as a miner at the time of the hearing.

27. *Luke Sertich* entered Respondent's employ in the Spring of 1924. He worked until August 15, 1930, when he was laid off. He returned to Respondent in September,

1933, and worked continuously as a track man and a miner until June 10, 1935, when, as a member of the Union, he went out on strike. He was active on the picket line from the commencement of the strike until about August 15, 1935.

He entered the employ of the Shattuck Den Mining Company on September 5, 1936, and was continuously employed by that Company as a miner from that date until the time of hearing.

From the termination of the strike until the time of his employment by Shattuck Den Mining Company, he had other casual employment elsewhere but not substantially similar to that held by him with Respondent at the time of the strike.

28. *Merrell Ernest Johnson* entered the employ of the Calumet & Arizona Mining Company in 1928. He worked for that Company until it merged with Respondent in 1931.

From 1934 until June 10, 1935, he was continuously employed by Respondent. On the last date, he was employed as a toplander helper. He then, as a member of the Union, went on strike. He was active in the picket line thereafter.

In the Spring of 1936, he entered the employ of Shattuck Den Mining Company. He was employed continuously by that Company from then until the time of the hearing.

Between the termination of the strike and the time he entered the employment of the Shattuck Den Mining Company he had other casual employment but not substantially similar to that held by him with Respondent at the time of the strike.

29. *George Gerhardt* first entered Respondent's employ in 1912. He left Respondent in 1913 and returned in June, 1915. He continued with Respondent thereafter until June 10, 1935, when, as a member of the Union, he went out on strike. On June 10, 1935, he was employed by Respondent as a steel sharpener. He was active in behalf of the Union on the picket line during the strike.

After the termination of the strike he had other casual employment but not substantially equivalent to that held by him with the Respondent at the time of the strike.

30. *William Graham* entered Respondent's employment in June, 1934. He was continuously employed by Respondent thereafter and on June 10, 1935, as a member of the Union, went on strike. At that time he was employed by Respondent as a pocket man. He served on the picket line from the commencement of the strike until August 24, 1935.

He entered the employ of the Shattuck Den Mining Company November 23, 1936, and worked continuously for that Company until the time of the hearing.

Between the termination of the strike and November 23, 1936, he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

31. *William E. Sharp* entered Respondent's employ in 1929. He was laid off about a year later. On June 7, 1935, he was reemployed by Respondent. On June 10, 1935, pursuant to this reemployment, he went to work for Respondent as a blacksmith's helper. He went out on strike on June 11, 1935, and was active in behalf of the Union, serving on the picket line until about August 1, 1935.

After the termination of the strike, he secured casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

32. *Richard Johnson* entered the employ of the Shattuck Den Mining Company April 9, 1936. On that date, he joined the Union for the first time. He did not participate in the strike.

In January, February and March, 1936, for the first time he applied to Respondent for employment. He was refused employment, the reason being given him that other members of his family were not in good standing with the Respond-

ent. His father and brother were formerly employed by the Respondent.

The allegations of the Complaint as to this person should be dismissed.

33. *Lester F. Bethel* entered the employment of the Calumet & Arizona Mining Company in 1925. He was transferred to Respondent's pay roll at the time of the merger in 1931 and he continued with the Respondent thereafter. On June 10, 1935, he was employed by Respondent as a motorman and on that date, as a member of the Union, he went out on strike. He was active in the picket line in behalf of the Union until about August 20, 1935.

After July 16, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time he went out on strike.

34. *Mike Mihelich* entered the employment of the Calumet & Arizona Mining Company in 1916. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent. He worked continuously for Respondent thereafter, and, on June 10, 1935, he was employed by Respondent as a timberman when, as a member of the Union, he went out on strike. He was active in the picket line thereafter until about the 15th of August, 1935.

After the termination of this strike he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

35. *Pete D. Caretto* entered the employment of the Calumet & Arizona Mining Company in 1922. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent. He left Respondent's employ in 1931 and returned in 1932 and was continuously employed by Respondent thereafter.

On June 10, 1935, he was employed by Respondent as a top man and on that date, as a member of the Union, he went out on strike. He served in the picket line in behalf of the Union until August 21, 1935.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

36. *Henry Waters* entered Respondent's employ in 1927. He was laid off in 1929. He returned to Respondent's employ in 1933 and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a miner and on that date, as a member of the Union, went out on strike. He was active in the picket line thereafter until August 20, 1935.

Some time in 1937, (the record does not specify the day or month), he applied to the Shattuck Den Mining Company for employment, and, after a physical examination, he was found to have silicosis and rejected for that reason.

As he was employed by Respondent as a miner at the time of the strike, and as the record does not show that he was physically able to perform the duties of a miner after 1937, the Respondent should not be required to offer this employee reinstatement nor back pay after January 1, 1937.

37. *P. C. Lytle* entered the employ of the Calumet & Arizona Mining Company in 1927. In 1931, at the time of the merger, he was transferred to the pay roll of the Respondent and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a repair man and on that date, as a member of the Union, he went on strike. He was not active in the picket line during the strike.

After the termination of the strike, he was refused reinstatement by the Respondent because he went on strike and remained on strike after July 5, 1935.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

38. *Jesse Edge* entered Respondent's employ in 1929. He was continuously employed by Respondent thereafter. On June 10, 1935, he was employed by Respondent as a motorman and, on that date, as a member of the Union, he went on strike. He served on the picket line thereafter until about August 15, 1935.

He entered the employ of the Shattuck Den Mining Company on July 23, 1937, and had been continuously employed by that Company from said date until the time of hearing.

After August 15, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

39. *Herschel J. Montgomery* entered Respondent's employ in 1930. He was employed by Respondent until July 3, 1934. On July 20, 1934, he returned to Respondent's employ and worked for the Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a repair man in the boiler shop and, as a member of the Union, he then went out on strike. He was active in the picket line thereafter until about August 10, 1935. After August 10, 1935, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

40. *J. M. Morris* entered the employ of the Calumet & Arizona Mining Company in June, 1926. In 1931, as a result of the merger, he was transferred to the pay roll of the Respondent. He worked continuously for Respondent thereafter.

On June 10, 1937, he was employed by Respondent as a powder man and, on that date, as a member of the Union, he went out on strike. He served on the picket line thereafter until about June 25, 1935. After that date and until the termination of the strike, he served in the strike headquarters of the Union thereby assisting the Union in maintaining the strike.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with the Respondent at the time of the strike.

41. *Leonard Guess* entered the employ of the Calumet & Arizona Mining Company before 1931 when at the time of the merger he was transferred to the pay roll of the Respondent. He was employed by Respondent continuously thereafter until January 14, 1935, when he voluntarily left Respondent's employment.

On June 10, 1935, he was not an employee of the Respondent but was a member of the Union. He did not participate in the picket line.

After the termination of the strike, he applied to Respondent for employment but was refused because of his Union membership.

In January, 1936, he entered the employ of the Shattuck Den Mining Company and remained in its employ until August, 1936. He was casually employed elsewhere but not in employment substantially equivalent to that held by him with the Respondent before January 14, 1935.

As this man was not an employee of the Respondent on June 10, 1935, or any time thereafter, the allegations of the Complaint as to him should be dismissed.

42. *Frank Peterson* entered Respondent's employ in January, 1935. On June 10, 1935, he was employed by Respondent as a miner when, as a member of the Union, he went out on strike. He served on the picket line from the commencement of the strike until about August 10, 1935.

After the termination of the strike, he had casual employment elsewhere but not substantially equivalent to that held by him with Respondent at the time of the strike.

43. *H. D. Edge* entered Respondent's employ in 1924. With the exception of a short vacation, he worked for Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a miner and, on that date, as a member of the Union, he went out on strike. He served on the picket line in behalf of the Union after July 5, 1935.

After the termination of the strike, he was casually employed elsewhere but not in substantially equivalent employment to that held by him with Respondent at the time of the strike.

44. *Ben H. Stringer* entered Respondent's employ in 1934 and was employed by Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a mucker when, as a member of the Union, he went out on strike. He served on the picket line from the commencement of the strike until about August 22, 1935. In April, 1935, he entered the employ of the Shattuck Den Mining Company. He was later discharged by that Company.

45. *George C. Rohrer* entered the employ of the Calumet & Arizona Mining Company in 1928. In 1931, at the time of the merger, he was transferred to Respondent's pay roll and worked for Respondent continuously thereafter.

On June 10, 1935, he was employed by Respondent as a motorman when, as a member of the Union, he went out on strike. He served on the picket line in behalf of the Union after July 5, 1935.

Said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emegy Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto,

Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, were employees of Respondent on July 5, 1935, and remained employees of Respondent at all times herein referred to thereafter.

On August 9, 1935, and again on August 23, 1935, each of said employees was refused employment by the Respondent for the reason that said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, joined and assisted a labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

By said refusal to employ said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge,

Ben H. Stringer and George C. Rohrer, Respondent has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act.

By said refusal to employ W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, Respondent has discouraged membership in a labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30.

III.—Interstate Commerce.

Respondent's Copper Queen Branch, Mines Division, (where the labor dispute herein reported occurred), at Bisbee, Arizona, produced 795,946 dry tons of ore in 1936 and 967,249 dry tons in 1937. In 1936, Respondent shipped 785,061 tons of copper smelting ore to its smelter at Douglas, Arizona, and 10,453 tons of basic sulphide ore to the smelter of another corporation at El Paso, Texas. In 1936, Respondent shipped 432 tons of silver-lead ore from the Copper Queen Mine to the refinery of its wholly-owned subsidiary, the Nichols Copper Company at El Paso, Texas. In 1936, Respondent shipped 967,049 tons of copper smelting ore from its Copper Queen Mine to its smelter at Douglas, Arizona, and 200 tons of silver-lead ore to the refinery of the Nichols Copper Company at El Paso, Texas.

In 1936, Respondent purchased 593,347,000 cubic feet of natural gas from the El Paso Natural Gas Company at El Paso, Texas, and had said gas delivered to it by pipeline from the State of New Mexico to the Copper Queen Mine in the State of Arizona. In 1937, Respondent purchased 698,959,000 cubic feet of gas from the same seller and under the same conditions of delivery.

In 1936, Respondent purchased 22,841 barrels and in 1937, 37,177 barrels of fuel oil from sellers thereof located outside the State of Arizona and had said oil shipped from states other than the State of Arizona to its Copper Queen Mine.

These materials were used by the Respondent in its mining operations recovering the products of its Copper Queen Mine, which said recovered products were then shipped by Respondent as above reported.

In 1935, the Nichols Copper Company at El Paso, Texas, produced more than 121,000,000 pounds of copper from the products of Respondent's mines; in 1936, the Nichols Copper Company produced at El Paso, Texas, and Laurel Hill, New York, more than 192,000,000 pounds of copper from products of Respondent's mines. These products of the Nichols Copper Company, (Respondent's wholly-owned subsidiary) are shipped and sold to purchasers thereof located in States other than the State of the origin of the shipment.

Respondent had at all times referred to herein wholly-owned subsidiaries engaged in mining in the State of Sonora, Mexico; in copper refining in Texas and New York; in copper fabricating in New Jersey, New York, Indiana and California; in operating public utilities in Arizona; in wholesale and retail merchandising of food and clothing in Arizona and New Mexico; in railroad operation in Arizona; in fuel merchandising in New Mexico; and, in publishing newspapers in Arizona.

The operations of all of its subsidiaries were integrated with those of the Respondent and all assisted Respondent in

producing raw materials, manufacturing them into finished products, selling and shipping said finished products to purchasers thereof located in states other than the State of the origin of the shipment.

Respondent normally employed approximately 1,000 men at its Copper Queen Mine at all times referred to herein.

As a result of the labor dispute and strike reported herein, Respondent's normal production at its Copper Queen Mine was reduced about 1,000,000 pounds of ore in the month of June, 1935.

Respondent has never entered into any contract with any labor organization in connection with the operations of its Copper Queen Mine.

I find that the activities of the Respondent as set forth in Section II occurring in connection with the operations of Respondent as set forth in Sections I and III have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. The allegations of the Complaint as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson, and Leonard Guess should be dismissed.

2. Respondent by refusing to reinstate to their former positions W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis

Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer and thus discouraging membership in the labor organization known as the International Union of Mine, Mill & Smelter Workers, Local No. 30, and by interfering with, restraining and coercing its workers in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

3. Respondent, by refusing to reinstate to their former positions, W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

WHEREFORE, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining and coercing its employees in the exercise of the

right to self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. In order to effectuate the policies of the Act, Respondent take the following affirmative action:

(a) Offer to said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer immediate and full reinstatement to their former positions without prejudice or loss of seniority or other rights or privileges previously enjoyed;

(b) Make whole to said W. M. Day, Levi Crandal, Edgar Lewis Hargus, John Henry Key, George Frazee, John Patrick Foley, Edward Bowden, Paul Amaro, Wilford Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Grover D. Windsor, Joe Henry Dunkerson, Martin Vaclav, Monte Reed, Clyde Bigelow, Milton Wynn, Alexander Kalastro, W. H. Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William E. Sharp, Lester F. Bethel, Mike Mihelich,

Intermediate Report.

Pete D. Caretto, Henry Waters, P. C. Lytle, Jesse Edge, Herschel J. Montgomery, J. M. Morris, Frank Peterson, H. D. Edge, Ben H. Stringer and George C. Rohrer, for any losses in pay they may have suffered by reason of Respondent's failure to employ them between August 9, 1935, and the date of offer of reinstatement hereinbefore recommended, by paying to each of them a sum of money equivalent to that which each of them would normally have earned in wages during said period, less earnings from other employment during said period; provided that Respondent shall not be required to pay to said Clyde Bigelow any amount of money equivalent to that which he would normally have earned in wages after June 1, 1936; and, that Respondent shall not be required to pay to the said Henry Waters any amount of money equivalent to that which he would normally have earned in wages after January 1, 1937;

(c) Post notices in conspicuous places stating: (1), that Respondent will cease and desist in the manner aforesaid; (2), that such notices will remain posted for a period of at least thirty (30) consecutive days after date of posting; and, (3), file with the Regional Director for the Twenty-first Region on or before ten (10) days from the receipt of this Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that unless on or before ten (10) days from the receipt by Respondent of this Report, Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring Respondent to take the action aforesaid.

Sgd. THOMAS H. KENNEDY,
THOMAS H. KENNEDY,
Trial Examiner

Dated: this 16th day of March, 1938.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

Pursuant to Section 34, Article II, Series 1, as amended, of the Rules and Regulations promulgated by the National Labor Relations Board, respondent presents herewith its exceptions to the record and to the Intermediate Report and rulings of the Trial Examiner in the above entitled case. For the purpose of continuity and clarity these exceptions follow the form of the Intermediate Report which was served upon respondent on the 23rd day of March, 1938. The abbreviation "Int. Rep." refers to the Intermediate Report, and the abbreviation "Tr." refers to the Official Transcript of the hearing.

A—THE ANSWER.

Respondent takes exception to the statement (Int. Rep. p. 2) relative to the answer filed by respondent, which is contained in Board's Exhibit No. 1, admitted in evidence by the Trial Examiner without objection (Tr. p. 4). An examination of respondent's answer as contained in Board's Exhibit 1 will show that respondent did not admit the inter-

state character of its operations, but that respondent merely admitted, denied or made further specific allegations with respect to respondent's corporate activities. Respondent did not deny that the employees named in the complaint were discharged in violation of the Act for the reason that no such allegations were contained in the complaint. Paragraph XXII of respondent's answer (Board's Exhibit No. 1) constitutes respondent's denial and answer with respect to the allegations contained in paragraph 36 of the complaint which are to the effect that respondent has refused to reinstate certain specified individuals formerly employed by respondent.

B—Rulings on Motions and Evidence.

Respondent takes exception to the ruling of the Trial Examiner (Tr. p. 7) denying six written motions to dismiss, which were directed to the sufficiency of the allegations of the complaint and were filed with the Regional Director for the Twenty-First Region within the time in which respondent was required to answer the complaint. This exception is predicated upon the same grounds as those advanced in support of the motions.

Respondent takes exception to the rulings of the Trial Examiner (Tr. pps. 741-762) denying six motions to dismiss made by respondent at the hearing at the close of the Board's case. This exception is predicated upon the same grounds as those advanced in support of the motions.

Respondent takes exception to the rulings of the Trial Examiner (Tr. p. 936) denying seven motions to dismiss made by respondent at the conclusion of the hearing, six of the said motions being a renewal of those made at the close of the Board's case (Tr. pps. 741-762) and the seventh being an additional motion set forth on page 936 of the Transcript. This exception is predicated upon the same grounds as those advanced in support of the motions.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

Respondent takes exception to the rulings of the Trial Examiner (Int. Rep. p. 3) denying nine written motions to dismiss which were filed by respondent with the Trial Examiner at the conclusion of the hearing. This exception is predicated upon the same grounds as those advanced in support of the motions. This exception does not go to that portion of the Trial Examiner's ruling (Int. Rep. p. 3) which recommends the dismissal of the complaint as to William Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. In this connection respondent points out that to this list of names as to whom the Trial Examiner has recommended dismissal of the complaint should be added the name of John Patrick Foley, in conformity with the findings of the Trial Examiner (Int. Rep. p. 8) with respect to that individual.

In addition to the foregoing respondent takes exception to the ruling of the Trial Examiner (Tr. pps. 4 and 5) overruling the objection of respondent to the introduction in evidence of Board's Exhibit No. 2, which purports to be a publication of the United States Department of Labor entitled "An Analysis of Strikes". This exception is predicated upon the grounds that Board's Exhibit No. 2 is incompetent, irrelevant, and immaterial to the issues in the case, is self-serving, and is not supported by a proper foundation in the evidence.

Respondent also takes exception to the ruling of the Trial Examiner (Tr. p. 830) refusing to allow a witness for respondent, Kobey Kennaugh, to answer the following question:

> "Q. Has the failure of the company to re-employ any of these, or all of these 48 men, ever led to a dispute between the Association and the company?
> A. It has not."

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

This exception is predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.

Respondent also takes exception to the ruling of the Trial Examiner (Tr. p. 848) sustaining an objection to the following question propounded by respondent's counsel to respondent's witness, T. J. Rescola:

> "Q. And has the failure on the part of the company to employ any of the men who walked out in June, 1935, or who were on the picket line, led or tended to lead to any dispute between the company and its employees?"

The foregoing exception is also taken to the ruling of the Trial Examiner sustaining objections to a question or questions of similar import propounded by respondent's counsel to respondent's witnesses. H. L. Sullivan (Tr. p. 857).

Said exceptions are predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.

Respondent takes exception to the ruling of the Trial Examiner (Tr. p. 851) sustaining an objection and striking the answer to the following question propounded to Respondent's witness, T. J. Rescola:

> "Q. Can you state whether or not, if the company put these men back to work, a dispute or controversy would be apt to exist between the men now working for the company and the company regarding their reinstatement?
>
> "A. Yes sir."

This exception is predicated upon the ground that the question was proper and was propounded for the purpose of adducing testimony material to the issues in the case.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

C—Findings of Fact.

I—The Parties.

1. *The Respondent, Phelps Dodge Corporation, a corporation.*

Under the foregoing heading (Int. Rep. p. 3) respondent takes exception to the use of the term "labor dispute" by the Trial Examiner (Int. Rep. p. 4). There is no evidence in the record of a labor dispute current on July 5, 1935.

2. *The Union, International Union of Mine, Mill and Smelter Workers, Local No. 30.*

Respondent takes exception to the finding (Int. Rep. p. 4) to the effect that respondent discharged certain individuals on June 6, 1935 "for their union activity". Such a finding is immaterial to the issues in the case and there is not sufficient evidence in the record to support it.

Respondent takes exception to the finding (Int. Rep. p. 5) that "Pursuant to this strike vote, a large majority of the Union members employed by the Respondent at the Copper Queen Mine struck on June 10, 1935." The Board's witness, W. M. Day, testified, and it was stipulated by counsel, (Tr. pps. 132-133), that no strike vote was ever held in accordance with the requirements of the by-laws of the union. Day further testified (Tr. p. 139) that at no time between June 6, 1935, and June 10, 1935, was the matter of the discharge of certain individuals by respondent on the former date discussed by the union and the management. Day was unable to state whether or not any notice was given to respondent of the union's decision to strike (Tr. p. 139).

Respondent takes exception to the finding (Int. Rep. p. 5) that "This strike continued until August 24, 1935." The evidence shows (Tr. pps. 809, 810, 893, 896-898) that there was no strike in force or effect on July 5, 1935, or at any time thereafter.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

II—Refusal to Reinstate Employees For Union Activity.

Respondent takes exception to the finding (Int. Rep. p. 5) that "Respondent's employees named hereinafter were on strike on July 5, 1935, and continued on strike until August 24, 1935." The evidence shows that there was no strike in force or effect on July 5, 1935, or at any time thereafter. M. A. Bateman testified (Tr. p. 809) that on June 7, 1935, there were 941 persons on the payroll at respondent's Copper Queen Branch, Mines Division; that on June 21, 1935, there were 952; that on June 28, 1935, there were 986, and that on July 3, 1935, there were 996. Bateman further testified (Tr. p. 810) that of the persons on the payroll 766 were actually working on June 7, 1935; that 759 were actually working on June 21, 1935; that 766 were actually working on June 28, 1935, and that 808 were actually working on July 3, 1935. J. W. Fisher testified (Tr. p. 893) that in the last week of June, 1935, respondent's operations at its Copper Queen Branch, Mines Division, were normal. Fisher further testified (Tr. p. 897) that respondent actually overproduced during the last week of June, 1935.

Respondent takes exception to the finding (Int. Rep. p. 5) that "In each instance, the employee individually, or through a Committee representing the Union, requested reinstatement from the Respondent after July 5, 1935 particularly on August 9 and 23, 1935, and in each instance this request for reinstatement was refused by Respondent. The reason for this refusal to reinstate was the same in every case, to-wit: That the employee had participated in the strike and had been an active member of the picket line maintained by the Union outside the gate to Respondent's property." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 5) that "Respondent's determined policy to refuse employment to these men because of their union activity in connection with the strike is reflected in its inter-office cor-

respondence, copies of which appear in the exhibits; (see Board's Exhibits Nos. 59, 60, 61 and 67)." The evidence does not support the finding of such a policy upon the part of respondent, nor is the same reflected in the exhibits referred to.

Respondent takes exception to the finding that respondent's employment agent translated instructions to "go slow" to mean "that he was *not* to reinstate these men." There is no evidence in the record to support such a finding and the employment agent, M. A. Bateman, testified (Tr. p. 165) that he never received any "instructions not to rehire anybody".

Respondent takes exception to the finding (Int. Rep. p. 6) that "They all expressed the desire to return to Respondent's employ." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) that "Employment by the Respondent is preferable to that by the Shattuck Den Mining Company for the reason that Respondent is a larger, better established organization and can secure to its employees greater regularity and continuity of employment." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) that "By returning to the Respondent, these employees would retain seniority rights which they do not have at the Shattuck Den Mining Company." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 6) to the effect that individuals involved in the case who have been employed by the Shattuck-Denn Mining Company have not received "other regular and substantially equivalent employment to that held by them at the time of respondent's refusal to reinstate them". The record shows that of the thirty-seven individuals as to whom the Trial Examiner

recommends reinstatement with respondent (Int. Rep. pps. 26-27) twenty-two were in the employ of the Shattuck-Denn Mining Company at the time of the hearing and one, namely, Ben H. Stringer, had been employed by that company but had been discharged for cause. Joseph A. Wilcox, a witness for the Board, testified (Tr. pps. 675-684) that he was the Chief Engineer of the Shattuck-Denn Mining Company. He testified further that that company was originally organized in 1904 and later in 1925 reorganized as the Shattuck-Denn Mining Corporation. He testified that with the exception of a period of two years, from 1932 until 1934, the Shattuck-Denn Mining Company has been operating continuously since 1925. He testified that the reason for the shut-down during the period 1932-1934 was depressed business conditions and that many of the large mining companies in the State of Arizona were not operating during that period. He testified that since 1935 the Shattuck-Denn Mining Company has been working on a six day week basis, except for a period of time since that year when operations were on an alternate six and seven day week basis. He testified that the Shattuck-Denn mines are located at a point 2500 feet from respondent's Junction shaft in Bisbee, Arizona. He testified that the wages have been and are the same as those paid by respondent. He testified that at the time of the hearing the Shattuck-Denn Mining Company had approximately 200 employees and that he knew no reason which would lead him to believe that there would be any interruption of present operations. In this connection he further testified that recently a new ore body of relatively substantial proportions had been developed by the Shattuck-Denn Mining Company. He further testified that there was no prospect of any of these individuals under discussion losing their jobs with the Shattuck-Denn Mining Company. James Malley, a witness for the Board, testified (Tr. pp. 689-695) that he is Deputy State Mine Inspector for the

State of Arizona. He further testified that the ventilation, working conditions, safety conditions and accident records of respondent and of Shattuck-Denn Mining Company are substantially the same. He further testified on the basis of thirty years experience in the mining industry that he would have no preference on the question of working with one company or the other. He also testified that there was no difference in the type of work done by employees of respondent and that done by employees of Shattuck-Denn Mining Company.

In addition to the testimony of these two individuals, who testified on behalf of the Board, there is considerable testimony given by several of the complaining witnesses which tends to establish that employment by the Shattuck-Denn Mining Company is substantially equivalent to employment by respondent. Paul Amaro testified (Tr. p. 307) that there is no difference in the working conditions, wages and hours between respondent and the Shattuck-Denn Mining Company. Grover D. Windsor testified (Tr. pps. 376-377) that he was making $5.24 a day when he left the employ of respondent and at the time of the hearing he was making $5.76 a day with the Shattuck-Denn Mining Company. He further testified that he did not think there was any difference in the conditions of employment. Martin Vaclav testified (Tr. p. 423) that he could not see much difference between his former job with respondent and his present job with the Shattuck-Denn Mining Company. W. H. Bigelow testified (Tr. p. 482) that there is not much difference between his present job with the Shattuck-Denn Mining Company and his former job with respondent. Ellis Scales testified (Tr. p. 501) that the same type of minerals are mined by the two companies and that there is no difference in their safety standards. Frank Erkkila testified (Tr. p. 510) that the Shattuck-Denn Mining Company had just opened up a new large ore-body. Luke Sertich testified (Tr.

p. 517) that at the time he was working for respondent he was receiving $5.24 a day and that he had received as high as $6.52 while employed by the Shattuck-Denn Mining Company (Tr. p. 519). William Graham testified (Tr. p. 545) that to the best of his knowledge the Shattuck-Denn Mining Company had been in existence since his birth. John Henry Key testified (Tr. pps. 234-235) that since December 1, 1936, he has been continuously employed by the Shattuck-Denn Mining Company at a rate of pay higher than that at which he was being paid at the time he left the employ of respondent and that he has averaged six days of work a week with the Shattuck-Denn Mining Company as against five with respondent.

1 and 2—W. M. Day and Levi Crandall:

Respondent takes exception to the findings (Int. Rep. pps. 6 and 7) that Day's and Crandall's work with the respondent ceased as a consequence of and in connection with a current labor dispute. The Trial Examiner has found that both men were discharged on June 6, 1935. There is no evidence in the record of any labor dispute prior to June 10, 1935. Day testified (Tr. pps. 139-140) that at no time between June 6, 1935, and August 16, 1935, was there any discussion between the Union and respondent relative to the discharge of Day and Crandall and others on June 6, 1935.

Respondent takes exception to the finding (Int. Rep. p. 7) that on June 6, 1935, Crandall was discharged because of membership in the Union. Such a finding is not supported by the evidence and is immaterial to the issues of the case.

Respondent takes exception to the finding (Int. Rep. p. 7) that Crandall was casually employed but did not obtain regular and substantially equivalent employment between July 5, 1935, and June 7, 1937. Crandall testified (Tr. p. 196) that on September 15, 1935, he went to work as a miner for the Keystone Mining Company in Kingman, Arizona.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

3—Edgar Lewis Hargus:

Respondent takes exception to the finding (Int. Rep. p. 7) that Hargus was casually employed but did not obtain regular and substantially equivalent employment prior to being employed by the Shattuck-Denn Mining Company. Hargus testified (Tr. pps. 206 and 214-215) that in August, 1935, he obtained employment in New Mexico as a jackhammer operator and received $5.40 per day. He further testified (Tr. p. 206) that he voluntarily quit that employment.

Respondent takes exception to the finding (Int. Rep. p. 7) that at the hearing Hargus expressed a desire to return to respondent. Not only is such a finding immaterial to the issues of the case, but also Hargus testified (Tr. pps. 213-214) that he did not desire to return to respondent at the rate of pay he was receiving just prior to June 10, 1935.

4—John Henry Key:

Respondent takes exception to the finding (Int. Rep. pps. 7 and 8) that Key was casually employed but did not obtain regular and substantially equivalent employment prior to August, 1937. Key testified (Tr. pps. 222-224) that he went to work for the Shattuck-Denn Mining Company in August, 1935 (Tr. p. 227) and that he voluntarily quit that employment in November, 1935 (Tr. p. 223). He further testified that in January, 1936, he was employed as a shaft man by the Sunshine Mining Company at Kellogg, Idaho (Tr. p. 225); that he voluntarily quit that employment; and that he obtained other employment as a mine timberman, from which he was discharged prior to being reemployed by the Shattuck-Denn Mining Company in August, 1937 (Tr. pps. 225-226).

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

5—George Frazee:

Respondent takes exception to the finding (Int. Rep. p. 8) that Frazee was casually employed but did not obtain regular and substantially equivalent employment prior to February 15, 1937. Frazee testified (Tr. pps. 264-266) that in October, 1936, he became employed as a mine mucker or loader by the Gunnquely Coal Company at Rock Springs, Wyoming, at $6.86 per day.

7—Edward Bowden:

Respondent takes exception to the finding (Int. Rep. p. 8) that Bowden was casually employed but did not obtain regular and substantially equivalent employment between August 25, 1935, and March, 1937. Bowden testified (Tr. pps. 288-290) that he went to work for the Arizona Edison Company in November, 1935, and worked continuously for that company until he became employed by the Shattuck-Denn Mining Company in March, 1937.

8—Paul Amaro:

Respondent takes exception to the finding (Int. Rep. p. 9) that Amaro was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and June, 1936. Amaro testified (Tr. pps. 297-298) that in September, 1935, he went to work for the Boriana Mining Company at Kingman, Arizona, and that he voluntarily quit that employment in March, 1936.

9—Wilford Davis Mortenson:

Respondent takes exception to the finding (Int. Rep. p. 9) that Mortenson was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and August, 1936. Mortenson testified (Tr. pps. 313-314) that in October, 1935, he went to work for the

Gadsen Garage in Douglas, Arizona, and that he was employed continuously at that job until he went to work for the Shattuck-Denn Mining Company in August, 1936.

10—Anson Perry Windsor:

Respondent takes exception to the finding (Int. Rep. p. 9) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and November, 1936. Windsor testified (Tr. pps. 325-326) that in November, 1935, he went to work for the Pleasant-Hasler Construction Company and that he worked continuously at such employment until he became employed by the Shattuck-Denn Mining Company on November 23, 1936.

13—Tom Abedin:

Respondent takes exception to the finding (Int. Rep. p. 10) that Abedin was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Abedin testified (Tr. p. 362) that in March, 1937, he went to work as a miner for a Mr. McKenna.

14—Grover D. Windsor:

Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between June 26, 1935, and November, 1936. Windsor testified (Tr. pps. 373-374) that in December, 1935, he went to work for the Pleasant-Hasler Construction Company; that he continued work for that company until May, 1936.

Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was confined to the county jail "on the complaint of the respondent or its agents". Such a finding is immaterial to the issues in the case and there is no evidence in the record to support it.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

Respondent takes exception to the finding (Int. Rep. p. 11) that Windsor was refused employment after July 5, 1935, because of union activities. Such a finding is not supported by the evidence.

15—Joe Henry Dunkerson:

Respondent takes exception to the finding (Int. Rep. p. 11) that Dunkerson was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Dunkerson testified (Tr. pps. 384-386) that on June 13, 1936, he went to work for the Sunshine Mining Company in Kellogg, Idaho, and that he continued with that employment for a period of two months, at the expiration of which time he voluntarily quit the job.

16—Vernon Dell Curtis:

Respondent takes exception to the finding (Int. Rep. p. 11) that Curtis was refused employment by respondent for the reason that he had participated in union activities after July 5, 1935. Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 11) that Curtis was casually employed but not in substantially equivalent employment to that with respondent. Curtis testified (Tr. p. 399) that in January, 1937, he went to work for Shattuck-Denn Mining Company.

19—Monte Reed:

Respondent takes exception to the finding (Int. Rep. p. 13) that Reed was confined in the county jail "on the complaint of respondent or its agents". Such a finding is immaterial to the issues of the case and there is no evidence in the record to support it.

Respondent takes exception to the finding (Int. Rep. p. 13) that after July 5, 1935, Reed was refused employment

by respondent because he was a member of the Union after said date and because of the aid he rendered his fellow Union members in prosecuting the strike. There is insufficient evidence in the record to support such a finding.

20—Clyde Bigelow:

Respondent takes exception to the finding (Int. Rep. p. 13) that after the termination of the strike Bigelow was refused employment by respondent because he had participated in the strike and thereby had assisted the Union after July 5, 1935. There is insufficient evidence in the record to support such a finding.

Respondent takes exception to the finding (Int. Rep. p. 13) that since the termination of the strike Bigelow has been casually employed but has not obtained regular and substantially equivalent employment. Bigelow testified as to various other employments obtained by him which constitute regular and substantially equivalent employment (Tr. pps. 440-441, 444-450).

21—Milton Wynn:

Respondent takes exception to the finding (Int. Rep. p. 13) that on June 10, 1935, he went on strike as a member of the Union. Wynn testified (Tr. p. 454) that he was not a member of the Union in June, 1935.

Respondent takes exception to the finding (Int. Rep. p. 13) that Wynn has been casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Wynn testified (Tr. p. 457) that in November, 1935, he went to work for the Inspiration Copper Company, and from his further testimony it appears that since leaving that employment he has had other regular employment substantially equivalent to his employment with respondent (Tr. pps. 458-459).

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

Respondent takes exception to the finding (Int. Rep. p. 14) that Wynn was refused reinstatement by respondent after the termination of the strike because of his being on strike and his membership in the Union after July 5, 1935. There is no evidence in the record to show that Wynn was ever refused reinstatement and Wynn testified (Tr. p. 461) that he dropped out of the Union in 1934.

22—Alexander Kalastro:

Respondent takes exception to the finding (Int. Rep. p. 14) that Kalastro was employed by the Shattuck-Denn Mining Company until sometime in January, 1938. Kalastro testified (Tr. p. 466) that he was employed by that company at the time of the hearing.

24—William Windsor:

Respondent takes exception to the finding (Int. Rep. p. 15) that Windsor was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and December, 1936. Windsor testified (Tr. p. 487) that he went to work for the Pleasant-Hasler Construction Company on July 16, 1935, and that he worked continuously at that employment for over a year.

25—Ellis Meran Scales:

Respondent takes exception to the finding (Int. Rep. p. 15) that Scales was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and October, 1936. Scales testified (Tr. pps. 495-497) to other employment which he had had during that period which was regular and substantially equivalent to his employment with respondent.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

28—Merrill Ernest Johnson:

Respondent takes exception to the finding (Int. Rep. p. 16) that Johnson, as a member of the Union, went on strike. Johnson testified (Tr. p. 526) that he was not a member of the Union at the time of the strike. He further testified (Tr. p. 534) that he first joined the Union when he entered the employment of the Shattuck-Denn Mining Company in the Spring of 1936.

30—William Graham:

Respondent takes exception to the finding (Int. Rep. p. 17) that Graham was casually employed but did not obtain regular and substantially equivalent employment between August, 1935, and November, 1936. Graham testified (Tr. pps. 546-549) that in September, 1935, he went to work for the Boriana Mining Company at Kingman, Arizona, and that he continued in that employment until May, 1936, when he was discharged. Graham further testified (Tr. pps. 550-551) that on June 25, 1936, he went to work for the Sunshine Mining Company in Kellogg, Idaho, and that he remained in the employ of that company until November, 1936, at which time he voluntarily quit the job.

31—William E. Sharp:

Respondent takes exception to the finding (Int. Rep. p. 17) that since August, 1935, Sharp has been casually employed but has not obtained regular and substantially equivalent employment. Sharp testified (Tr. p. 562) that since October, 1937, he has been employed as a miner by the Alpine Mining Company at El Frieda, Arizona; that he was employed by that company at the time of the hearing. Sharp further testified (Tr. pps. 564-565) that in December, 1936, he went to work as a miner with the Bonnie Mining Company at Lordsburg, New Mexico; that he voluntarily left

that employment in August, 1937. Sharp also testified (Tr. p. 566) that for three or four months prior to going to work for the Bonnie Mining Company he was employed in Douglas, Arizona, by J. A. Cason.

33—Lester F. Bethel:

Respondent takes exception to the finding (Int. Rep. pps. 17 and 18) that since July 16, 1935, Bethel has been casually employed but has not obtained regular and substantially equivalent employment. Bethel testified (Tr. p. 583) that on December 5, 1936, he obtained employment driving a bus for a Southern Pacific contractor; that he had been continuously so employed since that date, and that he was so employed at the time of the hearing and receiving a salary of $130.00 a month. Bethel also testified (Tr. pps. 584-585) to other employment which he had had prior to his present job which constituted regular employment substantially equivalent to his employment with respondent.

34—Mike Mihelich:

Respondent takes exception to the finding (Int. Rep. p. 18) that Mihelich was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Mihelich testified (Tr. p. 593) that in November, 1936, he was employed as a miner by a Mr. McKenna and that he worked at that employment continuously for a period of about a year.

35—Pete D. Caretto:

Respondent takes exception to the finding (Int. Rep. p. 18) that Caretto was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Caretto testified (Tr. pps. 601-604) to various employments which he has had and which he voluntarily

gave up during that period. All of those employments constituted regular employment substantially equivalent to his employment with respondent.

37—P. C. Lytle:

Respondent takes exception to the finding (Int. Rep. p. 19) that after the termination of the strike Lytle was refused reinstatement by respondent because he went on strike and remained on strike after July 5, 1935. There is insufficient evidence in the record to support such a finding.

Respondent takes exception to the finding (Int. Rep. p. 19) that Lytle was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Lytle testified (Tr. pps. 621-622) that in January, 1936, he became employed as a miner by the Hillside Mining Company at Hillside, Arizona, and that he was so employed continuously for a period of five and one-half months, at the end of which time he voluntarily quit the job. Lytle further testified (Tr. pps. 622-623) that in February, 1937, he went to work at the Shattuck Mine in Bisbee, Arizona, and continued in such employment until June of 1937. Lytle further testified (Tr. pps. 623-624) that in September, 1937, he went to work as a timberman for the Sullivan Mining Company in Idaho, and that after working at that employment for a month and a half he voluntarily quit the job. Lytle also testified (Tr. pps. 626-627) that in January, 1937, he went to work for the Bagdad Copper Company at Bagdad, Arizona, as a timberman and that after working eight days in that employment he voluntarily quit the job.

41—Leonard Guess:

Respondent takes exception to the finding (Int. Rep. p. 20) that after the termination of the strike Guess applied to respondent for employment but was refused because of his Union membership. Such finding is not supported by the evidence.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

42—Frank Peterson:

Respondent takes exception to the finding (Int. Rep. p. 21) that Peterson was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Peterson testified (Tr. pps. 697-703) to various employment which he has had during that period and which constitute regular employment substantially equivalent to his employment with respondent.

43—H. D. Edge:

Respondent takes exception to the finding (Int. Rep. p. 21) that Edge was casually employed but has not obtained regular and substantially equivalent employment since August, 1935. Edge testified (Tr. pps. 710-711) that in June, 1936, he went to work as a miner with the Climax Molybdenum Mining Company at Climax, Colorado, and that after working eleven shifts for that company he voluntarily quit the job. Edge further testified (Tr. pps. 712-713) that from October, 1936, until April, 1937, he was continuously employed as a miner by a Joe Colford in Bisbee, Arizona.

Respondent takes exception to the finding (Int. Rep. p. 22) that the individuals therein listed "were employees of respondent on July 5, 1935, and remained employees of respondent at all times herein referred to thereafter". Such a finding is not supported by the evidence. With reference to the name of John Patrick Foley respondent again refers to the finding (Int. Rep. p. 8) that Foley was not an employee of the respondent.

Respondent takes exception to the finding (Int. Rep. p. 22) to the effect that on August 9, 1935, and again on August 23, 1935, the individuals therein listed were refused employment by respondent because they had engaged in union activities. Such a finding is not supported by the evidence.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

Respondent takes exception to the finding (Int. Rep. pps. 22-23) that by its refusal to employ the individuals therein listed respondent has "interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act." Such a finding is not supported by the evidence.

Respondent takes exception to the finding (Int. Rep. p. 23) that by its refusal to employ the individuals therein listed respondent has discouraged membership in a labor organization. Such a finding is not supported by the evidence.

III.—Interstate Commerce.

Respondent takes exception to the finding (Int. Rep. p. 24) that it normally employed approximately 1,000 men at its Copper Queen Branch, Mines Division. The evidence shows that in June, 1935, respondent had in its employ approximately 950 individuals.

Respondent takes exception to the finding (Int. Rep. p. 25) "that the activities of the Respondent as set forth in Section II occurring in connection with the operations of Respondent as set forth in Sections I and III have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce". Such a finding is not supported by the evidence.

D.—Conclusions and Recommendations.

Respondent takes exception to the following determinations and conclusions made by the Trial Examiner under the foregoing heading (Int. Rep. p. 25):

1. Respondent excepts to the failure to include the name of John Patrick Foley in the conclusion that the allegations in the complaint should be dismissed as to William

Daugherty, Vernon Dell Curtis, Grover Cornett, Richard Johnson and Leonard Guess. The Trial Examiner has made a recommendation of dismissal as to John Patrick Foley (Int. Rep. p. 8).

2. Respondent takes exception to the conclusion of the Trial Examiner (Int. Rep. p. 25) that by refusing to reinstate to their former positions the individuals named therein respondent "has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, sub-division (1) and Section 2, sub-divisions (6) and (7) of the National Labor Relations Act." Such a conclusion is not supported by the evidence and is contrary to law.

3. Respondent takes exception to the conclusion (Int. Rep. p. 26) that by refusing to reinstate to their former positions the individuals therein listed respondent "has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, sub-division (3) and Section 2, sub-divisions (6) and (7) of the National Labor Relations Act." Such conclusion is not supported by the evidence and is contrary to law.

Respondent takes exception to the recommendations made by the Trial Examiner (Int. Rep. pps. 26-28).

1. Respondent takes exception to the recommendation that it cease and desist from the acts set forth in paragraph 1 (Int. Rep. p 26) for the reason that there is insufficient evidence to establish that respondent ever has or is now engaged in such acts.

2. Respondent takes exception to the recommendation that it cease and desist from the act set forth in paragraph 2 (Int. Rep. p. 26) for the reason that there is insufficient evidence to establish that respondent ever has or is now engaged in such act.

Respondent's Exceptions to the Record and to the Intermediate Report and Rulings of the Trial Examiner.

3 (a). Respondent takes exception to the recommendation set forth in paragraph 3 (a) (Int. Rep. pp. 26-27) that it offer reinstatement to the individuals therein listed for the reasons and upon the grounds following:

(a) The evidence shows that W. M. Day, Levi Crandall and John Patrick Foley were not employees of respondent on, immediately prior to, or at any time subsequent to June 10, 1935, and it follows, therefore, that they are not employees of respondent under the definition of the term "employee" contained in Section 2 (3) of the National Labor Relations Act which became effective on July 5, 1935.

(b) With respect to John Patrick Foley the Trial Examiner has made a finding (Int. Rep. p. 8) in which it is recommended that the case be dismissed as to this person.

(c) In the case of Milton Wynn the evidence is clear to the effect that Wynn was not a member of the Union either at the time of the alleged discrimination or at the time of the walk out on June 10, 1935; that he was not in the picket line at that time; that respondent had no reason to believe that he was a member of the Union at any time; that he has not made application for employment at any time subsequent to July 5, 1935; that he has not been refused employment at any time subsequent to July 5, 1935, and that respondent's failure to employ him was not the result of his membership in the Union or of his having engaged in Union activities.

(d) With respect to H. D. Edge and J. M. Morris, the evidence is clear to the effect that these individuals are unemployable (Tr. pp. 711-712 and p. 659).

(e) With respect to H. J. Montgomery the evidence is clear to the effect that the alleged failure or refusal to "reinstate" Montgomery was based upon, and was fully justified by, his unsatisfactory service record (testimony of A. C. Reifsnider, Tr. pp. 882-892).

(f) None of the persons listed was on July 5, 1935, or has been at any time since that date, an "employee" of respondent as defined in Section 2 (3) of the National Labor Relations Act. The evidence shows that all of these individuals, with the exception of W. M. Day and Levi Crandall, who were discharged by respondent on June 6, 1935, and John Patrick Foley, who voluntarily left the employment of respondent in January, 1935, voluntarily left the employ of respondent on June 10, 1935. It is the position of respondent that this action upon the part of these individuals constituted neither a labor dispute nor a strike. The evidence shows that no strike vote was taken in accordance with the provisions of the Constitution and By-Laws of the Union. The evidence shows that no notice of an intention to call a strike was ever given to respondent by the Union or any of its members. The evidence shows that no demands were made by the Union on respondent, the refusal of which could be construed as constituting the basis of a labor dispute between respondent and members of the Union. The evidence shows that those voluntarily leaving the employ of respondent on June 10, 1935, constituted less than 10% of the persons employed by respondent on that date. The evidence shows that prior to July 5, 1935, the places of all of those who left on June 10, 1935, had been filled and that respondent's operations were normal. In view of this evidence and upon the basis of the law as it existed prior to the effective date of the National Labor Relations Act, respondent contends that these individuals had by July 5, 1935, ceased to be employees of respondent in any sense of the word. For the same reasons respondent contends that there was no labor dispute "current" on July 5, 1935. It follows that respondent could not have engaged in an unfair labor practice with respect to any of these individuals. It is respondent's contention that any order re-

quiring "reinstatement" of any of these individuals would be beyond the authority granted to the National Labor Relations Board under the terms and provisions of the National Labor Relations Act and would deny to respondent the rights guaranteed to it by the Fifth Amendment to the Constitution of the United States.

Sections 7 and 8 of the Act are confined exclusively to "employees". The rights guaranteed in Section 7 are guaranteed to "employees" only. Under Section 8 (1) it is made an unfair labor practice "to interfere with, restrain, or coerce employees" in the exercise of those rights. The labor practice defined in Section 8 (3) of the Act becomes unfair only when it operates to abridge the rights guaranteed to "employees" in Section 7. Moreover, it should be noted that there is no evidence in the record to show that the rights of any persons who actually were "employees" of respondent have been in any way abridged by the alleged refusal to "reinstate" these individuals.

Section 10 of the Act sets forth the powers of the Board with respect to the prevention of unfair labor practices and sub-section (c) of Section 10 authorizes the issuance of orders requiring a respondent "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." To construe this section as authorizing the Board to order affirmative action such as the giving of employment with or without back pay to persons other than those who are "employees" at the time such order is entered, would render the same unconstitutional and void. Such action would require the making of contracts with persons who, as far as any employment relationship is concerned, would be total strangers to the respondent, and would abridge the liberty of contract guaranteed to respondent by the Fifth Amendment to the Constitution of the United States. By the expressed wording of Section 10 (c) of the Act the Board's

authority to order reinstatement is limited to cases of reinstatement of "employees."

In addition, respondent contends that any construction of the provisions of the National Labor Relations Act whereby the same would be given a retroactive effect would, as applied to the evidence in this case, constitute a denial of the due process of law guaranteed to respondent by the Fifth Amendment.

(g) The evidence shows that all of the persons listed in paragraph 3 (a), with the exception of Emory Adelbert Curtis, George Gerhardt, J. M. Morris and George Rohrer, have obtained regular and substantially equivalent employment and are, therefore, not "employees" of respondent as that term is defined in Section 2 (3) of the Act.

(h) The evidence fails to establish an unfair labor practice "affecting commerce." There is no evidence to establish, or from which it could be inferred, that the alleged unfair labor practice is "in commerce, or burdening or obstructing commerce or the free flow of commerce" or that it is such that it may be considered as "having led, or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." On the contrary, there is an abundance of testimony to the effect that respondent's alleged failure or refusal to reinstate these individuals has neither led, nor tended to lead, to such a result but, that, instead, reinstatement of these individuals would in fact lead, or tend to lead, to a dispute with the employees of respondent.

(i) The evidence fails to establish that respondent's alleged failure or refusal to "reinstate" these individuals has at any time operated to interfere with, restrain or coerce respondent's employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act. There is no evidence in the record to establish

that by such alleged failure or refusal respondent has discriminated against any of its employees "in regard to hire or tenure of employment, or any term or conditions of employment", and even assuming that there is evidence of such discrimination, there is no evidence in the record to establish that the same was for the purpose of or did in fact operate to "encourage or discourage membership in any labor organization."

(j) The evidence shows that the mining operations carried on by respondent at its Copper Queen Branch, Mines Division, are entirely antecedent to commerce and do not come within the regulatory powers conferred on the Congress of the United States by Article I, Section 8 of the Constitution of the United States. Any order of the National Labor Relations Board attempting to regulate these activities of respondent would constitute a violation of the provisions of the Tenth Amendment to the Constitution of the United States.

3 (b). Respondent takes exception to the recommendation of the Trial Examiner (Int. Rep. p. 27) that respondent make whole to the persons therein named any loss in pay they may have suffered by reason of respondent's failure to employ them since August 9, 1935, for the reasons and upon the grounds following:

(a) For the reasons and upon the grounds hereinabove set forth in the exceptions to paragraph 3 (a) of the conclusions and recommendations of the Trial Examiner, all of which said reasons and grounds are hereby incorporated in and made a part of the exception to paragraph 3 (b) of said conclusions and recommendations.

(b) For the reason that none of said persons were employees of respondent on July 5, 1935, or at any time thereafter and by reason thereof are not entitled to any back pay

whatsoever under the provisions of Section 10 (c) of the National Labor Relations Act.

(c) For the reason that all of said persons, with the exception of Emory Adelbert Curtis, George Gerhardt, J. M. Morris and George Rohrer, subsequent to July 5, 1935, and prior to the date of the hearing, obtained other regular employment substantially equivalent to employment by respondent and by reason thereof were not employees of respondent at the date of the hearing or at any time subsequent thereto and are not entitled to any back pay whatsoever under the provisions of Section 10 (c) of the National Labor Relations Act.

(d) For the reason that none of said persons applied to respondent for employment on August 9, 1935, but instead were engaged in picketing respondent's property on said date and until August 24, 1935; that according to the evidence the places and positions in the employ of respondent formerly held by said persons had been filled prior to July 5, 1935, by others and that the respondent's operations prior to July 5, 1935, were normal in all respects; that there is no evidence to the effect that on August 9, 1935, or at any time thereafter, respondent had available places or positions for which said persons could have been employed.

(e) For the reason that under the provisions of Section 10 (c) of the National Labor Relations Act back pay may be ordered only as an incident to reinstatement of employees. None of said persons were employees of respondent on or after July 5, 1935, or at the date of the hearing and are therefore not entitled to reinstatement, and by reason of such facts are not entitled to back pay.

(f) For the reason that said recommendation does not operate to prevent any unfair labor practice affecting commerce or otherwise effectuate the policies of the Act, but,

instead, operates to impose a penalty upon said respondent and deprives respondent of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

3 (c). Respondent takes exception to the recommendation set forth in paragraph 3 (c) (Int. Rep. pps. 27-28) that it post notices as specified therein for the reason that the evidence fails to establish that respondent has ever or is now engaged in any unfair labor practice as defined in the National Labor Relations Act.

Respectfully submitted,

ELLINWOOD & ROSS
WILLIAM A. EVANS
DENISON KITCHEL
Attorneys for Respondent

ELLINWOOD & ROSS
WILLIAM A. EVANS
DENISON KITCHEL
807 Title & Trust Bldg.
Phoenix, Arizona
Attorneys for Respondent

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL NO. 30.	CASE NO. XXI-C-266

Respondent's Request for Permission to File Brief And for Oral Argument.

Respondent, Phelps Dodge Corporation, having filed herein its Statement of Exceptions To The Record and to the Intermediate Report and Rulings Of The Trial Examiner, hereby respectfully petitions the National Labor Relations Board for permission to file a brief and to present oral argument before the Board in support of such Statement and respondent's contentions in the above-entitled case, and that an order be entered giving respondent thirty days from the date hereof within which to file such brief and fixing a date for the presentation of such oral argument, all in pursuance of Section 36, Article II, Series 1, as amended, of the Rules and Regulations of the National Labor Relations Board.

Dated this 1st day of April, 1938.

Respectfully submitted,

/s/ ELLINWOOD & ROSS,
/s/ WILLIAM A. EVANS,
/s/ DENISON KITCHEL,
Attorneys for Respondent.

Ellinwood & Ross,
William A. Evans,
Denison Kitchel,
807 Title & Trust Building,
Phoenix, Arizona.

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL NO. 30.	Case No. C-500

Notice of Hearing.

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Thursday, May 5, 1938, at 8 o'clock p. m. in Room 326, Shoreham Building, Fifteenth and H. Streets, N.W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing, will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., April 5, 1938.

BEATRICE M. STERN,

(SEAL) BEATRICE M. STERN,
Assistant Secretary.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	Case No. C-500

Appearances at Hearing.

Room 442,
Shoreham Building,
Washington, D. C.

A hearing was held in the above matter for the purpose of ORAL ARGUMENT at the above place on May 5, 1938 at 2:00 P. M.

Before:

J. Warren Madden, Chairman

Donald Wakefield Smith, Member

Appearances:

Sumner Marcus, of Counsel to the Board

Denison Kitchel, for the Company
Phoenix, Arizona

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation, *and* INTERNATIONAL UNION OF MINE, MILL, and SMELTER WORKERS, LOCAL No. 30.	CASE No. XXI-C-266

Stipulation.

The National Labor Relations Board, acting pursuant to Section 36, Article II, Series 1, of its own Rules and Regulations, as amended, having requested of respondent the furnishing of additional evidence in the above entitled case,

IT IS HEREBY STIPULATED by and between William R. Walsh, attorney for the National Labor Relations Board, and Ellinwood & Ross and Denison Kitchel, attorneys for respondent, that the following contains a true and correct statement of the facts so requested by the National Labor Relations Board.

I.

NUMBER ON THE PAYROLL AUGUST 9, 1935.

On August 9, 1935 there were 1,012 persons on the payroll of the Copper Queen Branch, Mines Division.

II.

INDIVIDUALS HIRED BETWEEN AUGUST 9, 1935, AND JANUARY 27TH, 1938.

There is attached hereto, marked Exhibit A and made a part hereof, a list containing the name, date hired, occupation for which hired, and the date last worked in previous

service, if any, of each and every person employed or re-employed by respondent at its Copper Queen Branch, Mines Division, from August 9, 1935, to January 27, 1938.

III.

INDIVIDUALS LEAVING RESPONDENT'S EMPLOY BETWEEN AUGUST 9, 1935, AND JANUARY 27, 1938.

There is attached hereto, marked Exhibit B and made a part hereof, a list containing the name, date dropped from the payroll, date on which last hired, and occupation at time of leaving respondent's employ, of each and every person leaving respondent's employ for any reason at its Copper Queen Branch, Mines Division, from August 9, 1935, to January 27, 1938.

IV.

RECAPITULATION OF PAYROLL FLUCTUATIONS FROM AUGUST 9, 1935, TO JANUARY 27, 1938.

Month		*Number Hired*	*Number Leaving the Service*
August,	1935 (from 9th on)	24	69
September	"	35	53
October	"	56	22
November	"	27	11
December	"	27	16
January,	1936	63	22
February	"	31	21
March	"	45	16
April	"	56	24
May	"	95	18
June	"	45	35
July	"	74	36
August	"	112	44
September	"	132	67
October	"	78	42
November	"	70	36
December	"	75	30

Month		*Number Hired*	*Number Leaving the Service*
January,	1937	145	75
February	"	144	66
March	"	127	53
April	"	146	57
May	"	166	59
June	"	146	62
July	"	68	61
August	"	109	85
September	"	87	137
October	"	22	370
November	"	19	82
December	"	9	186
January,	1938 (to 27th)	16	36
Totals		2249	1891

IT IS FURTHER STIPULATED AND AGREED that this stipulation and the facts herein contained shall be incorporated in and become a part of the record in this case just as if the same had been offered and admitted as evidence in the course of the hearing before the Trial Examiner, it being mutually understood and agreed, however, that this stipulation and the facts herein contained are subject to all of the motions to dismiss and statements of exceptions made by respondent from the time of the commencement of these proceedings to and including the date hereof, all of said motions and statements being hereby renewed by respondent.

DATED this 11th day of January, 1939.

NATIONAL LABOR RELATIONS BOARD
WM. R. WALSH
Attorney

PHELPS DODGE CORPORATION
ELLENWOOD & ROSS
DENISON KITCHEL
Attorneys

Exhibit "A."

PHELPS DODGE CORPORATION

Copper Queen Branch, Mines Division.

Name and Date of Employment of Each and Every Person Employed or Re-employed by Phelps Dodge Corporation, Cooper Queen Branch, Mines Division, From August 9, 1935 to January 27, 1938.

Date Hired	Name	Occupation	If had previous service: Last day worked
8/9/35	Elbert Forrest	Mucker	
8/9/35	E. L. Hardy	Mucker	
8/11/35	J. A. Hamilton	Diamond drill helper	
8/12/35	William Barrow	Miner	
8/14/35	T. M. Osuna	Mucker	
8/14/35	D. A. Daugherty	Mucker	
8/14/35	Raymond Gregg	Miner	
8/14/35	D. L. Garcia	Miner	
8/14/35	M. W. McPherson	Miner	3/11/29
8/16/35	W. T. Wright	Miner	12/31/31
8/18/35	G. G. Trent	Mucker	
8/18/35	R. O. Allen	Miner	1/14/32
8/19/35	K. N. Webb	Mucker	
8/19/35	L. B. Williams	Mucker	
8/19/35	H. V. Hairston	Mucker	
8/19/35	W. S. Kitt	Physician	
8/19/35	Irvin Western	Miner	11/14/27
8/20/35	J. T. Toland	Miner	12/31/29
8/21/35	W. E. Simpson	Mucker	
8/21/35	I. E. Newton	Mucker	
8/21/35	C. F. Davenport	Mucker	
8/22/35	W. H. Crane	Miner	12/18/28
8/24/35	J. E. Massie	Mucker	7/1/35
8/29/35	J. F. Sartoech	Miner	8/26/30
8/3/35	H. C. Johnson	Miner	6/10/35
8/3/35	Henry Costley, Sr.	Miner	8/1/35
8/4/35	J. C. Rogers	Electrician helper	9/13/29
8/9/35	W. E. A. McElwain	Mucker	
9/9/35	G. R. Beal	Miner	9/4/24
9/9/35	R. J. Whelan	Mucker	7/17/30
9/9/35	F. R. Williams	Miner	8/15/35
9/11/35	Caroline Nixon	Nurse	5/25/32
9/20/35	E. R. Pierce	Mucker	
9/23/35	L. R. Cowderoy	Clerk	1/31/30
9/23/35	Roy Brooks	Miner	12/12/31
9/23/35	D. W. Newport	Mucker	
9/23/35	R. H. Shelton	Mucker	
9/25/35	Orville Tyra	Mucker	
9/23/35	R. L. Simpson	Mucker	
9/23/35	J. R. Winters	Miner	3/8/27
9/23/35	Tom Hargis	Mucker	3/17/22
9/23/35	L. E. Henderson	Miner	8/16/30
9/24/35	J. E. Mertaugh	Mucker	
9/24/35	P. L. Cooley	Mucker	
9/24/35	John Jos. Ryan	Mucker	

* Appears before each name which has been listed more than once.

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
9/24/35	J. C. Hancock	Mucker	
9/24/35	Jim Vercellino	Mucker	3/1/30
9/25/35	H. B. McDoniel	Mucker	
9/25/35	A. V. Barrett	Mucker	4/6/29
9/25/35	Earl Herbert	Miner	11/19/28
9/27/35	W. D. Hunt	Mucker	
9/25/35	Clemens Buscher	Mucker	3/30/30
9/27/35	P. H. Varner	Mucker	
9/27/35	B. O. Simmonds	Mucker	
9/27/35	Monroe McClintock	Mucker	
9/27/35	J. O. Shelton	Mucker	
9/27/35	R. W. Nichols	Mucker	
9/27/35	W. R. Buttler	Mucker	
9/27/35	J. L. Berryhill	Mucker	2/19/30
10/1/35	R. L. Whitlow	Mucker	
10/2/35	J. O. Cooley	Mucker	
10/1/35	R. C. Mielke	Mucker	
10/1/35	H. J. Brown	Mucker	
10/1/35	L. F. Tschirhart	Mucker	
10/1/35	R. L. Patton	Mucker	
10/3/35	H. T. Roberts	Mucker	
10/3/35	J. J. Eggleston	Miner	
10/3/35	H. L. Williams	Mucker	
10/1/35	T. L. Kester	Mucker	
10/1/35	Arthur Detloff, Jr.	Mucker	9/30/30
10/1/35	L. L. Davis	Miner	7/7/34
10/1/35	R. E. Eastham	Miner	8/13/35
10/2/35	D. P. Faulconer	Miner	9/2/27
10/1/35	L. V. Trammell	Mucker	
10/1/35	J. M. Ryan	Mucker	12/12/27
10/3/35	E. W. Butler	Mucker	4/26/30
10/3/35	Raymond Pernell	Mucker	2/19/30
10/3/35	J. P. Coughlin	Miner	
10/3/35	Loyd J. Lemon	Miner	
10/4/35	Ben F. Johns	Mucker	
10/4/35	L. M. Gurnett	Mucker	
10/4/35	R. O. Hockman	Mucker	
10/4/35	R. W. Kinchloe	Miner	10/1/35
10/4/35	W. M. Taylor	Mucker	
10/10/35	J. S. Barker	Mucker	
10/10/35	Edward J. Phillips	Mucker	
10/10/35	W. A. Poe	Mucker	
10/10/35	C. W. Hale	Miner	
10/12/35	Kroger C. Moon	Mucker	
10/12/35	Harric B. Stewart	Mucker	
10/12/35	Oscar E. Rushin	Mucker	
10/12/35	C. A. O'Brien	Mucker	
10/12/35	W. J. Hicks	Mucker	12/31/28
10/12/35	James Simpson	Mucker	8/22/29
10/17/35	L. L. Phelps	Mucker	
10/17/35	O. G. Cates	Mucker	
10/17/35	P. S. H. Moore	Mucker	
10/17/35	Edward F. Gaetthje	Mucker	
10/17/35	A. A. Musgrave	Mucker	
10/17/35	J. D. Ralph	Mucker	
10/17/35	F. V. Harris	Mucker	3/23/28

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
10/17/35	L. E. Kirby	Miner	8/5/31
10/16/35	J. C. Chapman	Draftsman	
10/22/35	C. F. Shields	Mucker	
10/22/35	W. A. F. Pollock	Mucker	
10/22/35	Pete J. Hewlett	Miner	4/30/30
10/22/35	Roge Q. Hewlett	Miner	4/30/35
10/23/35	Chas. N. Attaway	Mucker	
10/26/35	C. R. Stevens	Mucker	
10/26/35	W. D. Darter	Mucker	
10/26/35	Martin J. Dodge	Mucker	
10/26/35	S. W. Coons	Mucker	
10/26/35	H. C. Reabold	Mucker	
10/26/35	Robert Phipps	Mucker	4/24/30
10/31/35	W. G. Smith	Mucker	
11/2/35	W. A. Parkin	Mucker	
11/2/35	E. L. Renner	Mucker	
11/2/35	Tony A. Silva	Mucker	
11/2/35	Ray Loper	Mucker	
11/2/35	Everett C. Lytle	Miner	9/20/30
11/2/35	R. R. Rawley	Mucker	11/16/32
11/13/35	Albert C. Hansen	Mucker	
11/13/35	G. L. Brady	Mucker	
11/13/35	J. L. Hedgecock	Mucker	
11/13/35	D. T. Hunt	Mucker	7/30/30
11/13/35	P. M. Whelan	Mucker	
11/13/35	Oliver Johnson	Miner	8/7/31
11/13/35	E. W. Johnson	Mucker	10/31/35
11/15/35	F. E. Williams	Mucker	12/11/29
11/16/35	J. T. Diffie	Mucker	
11/16/35	L. S. Mosier	Mucker	
11/16/35	W. J. Winiarski	Mucker	
11/2/35	Pearl A. Wilcox	Librarian	
11/23/35	Harry L. Kope	Elec. Helper	
11/23/35	L. S. Armstrong	Mucker	
11/23/35	H. F. Gaethje	Mucker	
11/23/35	Hilary Page	Mucker	
11/23/35	H. T. Coons	Mucker	
11/23/35	J. J. Cowling	Mucker	
11/23/35	D. J. Reed	Miner	8/8/31
11/1/35	Mrs. J. E. Jordan	Nurse	
11/16/35	*Caroline Nixon	Nurse	
12/5/25	W. A. Stevens	Mucker	
12/5/35	Roy Kading	Mucker	
12/5/35	J. D. Fowler	Mucker	
12/5/35	W. A. Jones	Miner	10/23/20
12/5/35	Fount Reed	Mucker	2/14/30
12/5/35	Howard Dennison	Mucker	5/1/35
12/4/35	G. M. Harrelson	Miner	4/16/33
12/13/35	Frank Kasun	Mucker	
12/11/35	L. A. Scheffler	Mucker	
12/13/35	J. F. Gray	Miner	11/27/29
12/13/35	E. J. Frank	Mucker	9/4/29
12/11/35	A. A. Sabin	Miner	4/6/27
12/13/35	R. R. Hall	Mucker	
12/17/35	W. T. Bendixen	Mucker	
12/17/35	B. G. Benton	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
12/17/35	J. D. Grant	Mucker	
12/17/35	J. A. Lemon	Mucker	
12/18/35	G. H. Miller	Mucker	
12/18/35	E. G. Rodriquez	Miner	
12/17/35	L. C. Smith	Miner	9/31/29
12/16/35	C. C. Glasscock	Mucker	4/30/30
12/16/35	J. O. Richins	Miner	12/9/29
12/17/35	I. W. Rhoads	Mucker	3/31/35
12/17/35	A. S. Ham	Miner	9/24/31
12/17/35	L. E. Harris	Miner	1/4/30
12/15/35	*Caroline Nixon	Nurse	11/30/35
12/30/35	*J. P. Coughlin	Miner	12/6/35
1/2/36	C. J. Short	Mucker	
1/2/36	T. W. Massie	Mucker	
1/3/36	J. P. Sturdivant	Miner	
1/3/36	*W. G. Smith	Mucker	11/30/35
1/2/36	Herbert Gartin	Miner	10/12/35
1/2/36	R. E. Martyr	Mucker	8/30/35
1/3/36	Alvin Carter	Mucker	10/8/30
1/3/36	J. W. Kerwin	Mucker	11/15/32
1/3/36	A. W. Knowles	Mucker	1/23/30
1/4/36	Voris Page	Mucker	
1/4/36	G. L. Richman	Mucker	
1/7/36	V. F. Wojcik	Mucker	
1/7/36	N. L. French	Mucker	
1/7/36	G. L. Weatherford	Mucker	
1/4/36	C. W. Hicks	Mucker	
1/4/36	Edward Key	Miner	
1/7/36	D. I. Stutzman	Mucker	3/17/26
1/7/36	Lonnie Cloud	Miner	4/30/30
1/7/36	L. L. Kuder	Mucker	
1/7/36	J. F. Johnson	Mucker	2/28/31
1/4/36	J. L. Wootan	Miner	5/8/29
1/4/36	R. T. Parker	Miner	10/21/30
1/7/36	E. L. Hawkins	Miner	
1/8/36	G. E. Gipson	Miner	1/3/36
1/11/36	R. L. Jett, Jr.	Mucker	
1/9/36	P. W. Kincheloe	Mucker	
1/9/36	C. W. Carpenter	Mucker	
1/9/36	J. H. Daves	Miner	
1/9/36	M. K. Jean	Mucker	
1/11/36	M. T. Winters	Mucker	
1/11/36	E. M. Childress	Mucker	
1/11/36	T. H. Voelker	Mucker	
1/1/36	C. W. Hull	Mucker	
1/9/36	H. E. Carter	Mucker	
1/9/36	L. W. Hill	Mucker	9/17/28
1/9/36	C. [illegible] Russell	Miner	7/17/30
1/8/36	J. [illegible] McRae	Mucker	4/26/30
1/10/36	George Hawn	Miner	5/29/31
1/11/36	E. G. Craig	Mucker	
1/11/36	Dave Smith	Mucker	
1/10/36	H. A. Petsche	Mucker	
1/11/36	Woodrow Loper	Mucker	
1/11/36	Gordon Hodges	Mucker	3/3/27
1/11/36	Westley Daniel	Mucker	10/30/29

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
1/13/36	C. J. Kuhlmeyer	Mucker	12/14/35
1/17/36	W. H. Solomon	Mucker	
1/11/36	A. E. Dunham	Mucker	
1/11/36	W. J. Johnson	Mucker	
1/13/36	Kermit Grafton	Hospital orderly	
1/13/36	Dr. F. A. Obrock	Physician	
1/21/36	Hugh Balke	Miner	
1/21/36	G. J. Baranic	Miner	
1/21/36	J. E. Wall	Miner	
1/21/36	C. L. Greenwall	Mucker	
1/20/36	W. R. Graham	Mucker	
1/20/36	Pete Ivanovich, Sr.	Miner	
1/21/36	Lee R. Burrow	Miner	
1/21/36	B. F. Waller	Miner	
1/16/36	Margaret Spaulding	Hotel maid	
1/16/36	Doris Norberg	Hospital nurse	
1/31/36	Mrs. J. E. Harris	Hotel maid	
1/16/36	Mrs. P. E. Andrews	Hospital nurse	
2/1/36	E. R. Bryant	Miner	
2/13/36	J. M. Kleiner	Miner	
1/21/36	T. J. Salmon	Miner	
2/15/36	J. L. Brittain	Mucker	
2/16/36	W. R. Withington	Mucker	
2/13/36	W. G. Henwood	Miner	
2/16/36	L. M. Berry	Mucker	
2/16/36	Daniel G. Zigler	Mucker	
2/14/36	Lenore Norberg	Hospital nurse	
2/13/36	L. F. Miller	Miner	
2/13/36	A. M. Thompson	Miner	6/24/26
2/13/36	Earl Peterson	Miner	6/18/27
2/13/36	J. L. McNeil	Miner	
2/13/36	C. W. Shay	Miner	
2/18/36	J. A. Windham	Mucker	
2/16/36	W. C. Hobgood	Mucker	
2/18/36	A. T. Anderson	Mucker	
2/18/36	Preston Stidham	Mucker	
2/18/36	J. D. Jenkins	Mucker	
2/18/36	H. P. Jacoby	Mucker	
2/18/36	S. D. Bates	Mucker	12/19/17
2/18/36	H. L. Martin	Miner	
2/22/36	L. F. Meyer	Miner	
2/22/36	R. B. McCoy	Miner	
2/22/36	J. S. Brown	Mucker	
2/22/36	J. H. Cain	Miner	6/27/28
2/22/36	Antonio de la Torre	Miner	
2/22/36	Jack Bostwick	Miner	1/8/29
2/15/36	Clarence F. Morrison	Mucker	
2/26/36	H. R. Kees	Miner	
2/26/36	C. W. Flinn	Miner	
2/26/36	J. V. Dye	Miner	
3/2/36	G. O. Bergstrom	Mucker	
3/2/36	C. M. Morris	Miner	
3/3/36	L. A. Hartley	Miner	
3/2/36	R. M. Furr	Mucker	
3/2/36	R. C. Herrell	Miner	1/6/26
3/5/36	J. W. Wilson	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
3/5/36	E. M. Willbanks	Mucker	
3/5/36	R. I. Woodworth	Mucker	
3/5/36	A. P. Jenkins	Mucker	
3/5/36	Earl Wootan	Mucker	
3/5/36	Alex Henderson	Mucker	10/21/35
3/2/36	W. A. Floyd	Miner	1/20/30
3/5/36	Raymond James	Mucker	
3/10/36	W. J. Barr	Miner	
3/10/36	I. H. Parten	Mucker	
3/5/36	Bill L. Gamel	Mucker	
3/10/36	H. S. Robbins	Mucker	
3/11/38	A. A. Carlton	Electrician	
3/10/36	C. K. Schmidt	Mucker	2/24/36
3/10/36	H. A. Hall	3/10/36	
3/12/36	P. L. Harris	Mucker	
3/12/36	R. L. Hoffman	Mucker	
3/12/36	Carl Henderson	Miner	
3/12/36	A. A. Williams	Mucker	
3/12/36	A. F. Jobe	Mucker	
3/12/36	R. H. Hawkins	Mucker	
3/12/36	W. F. McNelis	Hotel clerk	
3/17/36	E. T. Allen	Mucker	
3/17/36	C. E. Hamilton	Mucker	
3/17/36	D. C. Kading	Mucker	
3/24/36	Claude Hampton	Miner	
3/24/36	Bid Abraham	Miner	
3/24/36	H. H. Johnson	Miner	4/30/30
3/24/36	E. R. Brittain	Miner	1/25/30
3/31/26	G. W. Kaske	Miner	10/14/23
3/31/26	E. E. Harris	Mucker	
3/31/26	H. R. Aten	Mucker	
3/31/36	L. C. Hall	Mucker	
3/31/36	Delbert DeFreece	Mucker	
3/31/36	Deck Chandler	Hospital orderly	
3/23/36	Keith Estes	Dispensary clerk	8/30/35
3/5/36	Mrs. E. C. Hill	Hospital nurse	
3/28/36	Mrs. Jewell Lee	Hospital nurse	
3/31/36	E. T. Eckel	Miner	
3/31/36	W. D. Kirland	Mucker	
4/2/36	T. C. Millican	Boilermaker helper	3/4/36
4/2/36	Woodrow Harris	Mucker	
4/7/36	M. A. Bonham, Jr.	Mucker	
4/7/36	W. M. Green	Mucker	
4/7/36	Willie Paken	Mucker	
4/3/36	R. F. White	Miner	6/1/35
4/9/36	H. M. Polley	Mucker	
4/9/36	P. F. Brown	Mucker	
4/9/36	W. J. Kasun	Mucker	
4/10/36	Andreas de Leon	Laborer	
4/13/36	P. L. Keller	Electrician	
4/9/36	M. E. Haggard	Mucker	8/30/30
4/13/36	Alejandro Ballesteros	Laborer	1/3/29
4/13/36	Alberto Burrola	Laborer	1/16/34
4/13/36	Jesus Ruiz	Laborer	3/9/31
4/15/36	Tim Holland	Miner	
4/15/36	Oscar Hollan	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous service: Last day worked
4/15/36	R. R. Garcia	Laborer	3/12/29
4/16/35	J. I. Garcia	Laborer	11/30/36
4/13/36	Macario Luque	Laborer	8/1/35
4/13/36	*Mrs. J. E. Jordan	Hospital nurse	
4/18/36	J. T. Wilson	Mucker	
4/16/36	F. B. Moson, Jr.	Mucker	
4/16/36	L. W. Warner	Mucker	
4/16/36	C. H. Johnston	Mucker	
4/18/36	H. F. Bergman	Mucker	
4/18/36	O. D. Dierking	Mucker	
4/17/36	C. A. G. Rhodes	Mucker	
4/18/36	L. E. Riggins	Mucker	
4/21/36	J. H. Jett	Mucker	
4/21/36	W. R. Brown	Mucker	
4/21/36	E. V. Martin	Mucker	
4/21/36	J. A. Dodge, Jr.	Mucker	
4/20/36	A. L. Mills, Jr.	Car repair helper	
4/16/36	W. B. Beam	Mucker	12/15/32
4/18/36	C. R. Gandy	Mucker	
4/20/36	*C. W. Carpenter	Mucker	2/29/36
4/20/36	D. R. Jeffrey	Electrician	11/4/21
4/25/36	D. O. Ladd	Mucker	
4/22/36	F. M. Hickman	Machinist	
4/25/36	G. A. Looman	Miner	9/15/35
4/17/36	Clifford Bailey	Janitor	
4/28/36	Roy O'Leary	Mucker	
4/28/36	P. H. Bertrand	Mucker	
4/28/36	Edward Johnson	Mucker	
4/30/36	E. S. House	Mucker	
4/28/36	H. E. Blanchard	Mucker	
4/29/36	D. M. Hurst	Mucker	
4/30/36	Herschel Fowler	Mucker	
4/27/36	D. G. Thorne	Electrician	
4/28/36	Harold Webster	Miner	3/4/27
4/28/36	W. E. Haygood	Mucker	2/28/30
4/28/36	V. R. Poulter	Mucker	
4/30/38	Mrs. P. E. Andrews	Hospital nurse	
4/18/36	Mrs. D. E. Knowles	Hospital nurse	
4/23/36	*K. E. Estes	Dispensary clerk	
5/1/36	M. A. D'Albini	Mucker	
5/1/36	S. C. McIntosh	Mucker	
5/2/36	D. B. Hogan, Jr.	Mucker	
5/2/36	G. J. Schandelmeier	Mucker	
5/2/36	R. L. Jones	Mucker	
5/2/36	Frank Gotch	Mucker	
5/2/36	M. J. Foudy, Jr.	Mucker	
5/2/36	A. C. Melton	Mucker	
5/2/36	Jack Jennings	Mucker	
5/2/36	Billy Barnes	Mucker	4/30/30
5/2/36	Douglas Strawn	Miner	8/30/35
5/2/36	T. L. Kinney	Mucker	
5/4/36	E. B. Farnsworth	Mucker	
5/5/36	O. C. Kelly	Mucker	
5/4/36	R. N. Haynes	Mucker	
5/5/36	L. A. Aaron	Miner	
5/4/36	H. M. Goetz	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
5/4/36	Jack A. Hill	Hotel Clerk	
5/5/36	F. A. Gray	Miner	9/30/29
5/7/36	J. M. Dunn	Mucker	
5/7/36	A. E. Kniffin	Mucker	
5/7/36	Paul Criss	Mucker	
5/9/36	Edward Matsen	Miner	
5/9/36	P. R. Brown	Mucker	
5/8/36	H. B. Kelley	Mucker	
5/9/36	F. M. Thompson	Mucker	
5/9/36	H. M. June	Mucker	
5/7/36	J. C. Oquim	Mucker	
5/7/36	James Dearing	Mucker	
5/7/36	W. L. Benton	Mucker	
5/9/36	O. D. Haynie	Mucker	
5/9/36	R. R. McLaughlin	Mucker	
5/9/36	Lee Bragg	Miner	7/13/29
5/7/36	*A. V. Barrett	Miner	11/11/35
5/7/36	*A. C. Hansen	Mucker	1/17/36
5/12/36	*W. N. Hunt	Mucker	
5/11/36	J. M. Bowman	Mucker	
5/12/36	W. F. Slater	Miner	
5/12/36	John Plavchak	Mucker	
5/12/36	G. F. Butler	Mucker	
5/13/36	Daniel Goode	Mucker	
5/14/36	R. E. Brandt	Mucker	
5/ /36	A. P. Coons	Mucker	
5/13/36	T. A. Crutsinger	Mucker	
5/1 /36	J. P. Townsend	Mucker	
5/13/36	Charles White	Mucker	4/30/30
5/11/36	W. C. Conley	Chemist	
5/16/36	E. M. Broadus	Mucker	
5/16/36	C. T. Moore	Mucker	
5/16/36	W. M. Skaggs	Mucker	
5/16/36	W. C. Morin	Mucker	
5/16/36	D. C. Martyr	Mucker	
5/16/36	N. L. Benich	Mucker	
5/16/36	G. G. Gilman	Mucker	
5/22/36	M. O. Evans	Mucker	
5/21/36	Willis Diffie	Mucker	
5/23/36	W. L. Sholly	Miner	
5/23/36	J. E. Pickering	Mucker	
5/21/36	George Grenko, Jr.	Mucker	
5/21/36	P. K. McRae	Mucker	
5/21/36	John Mazurko	Mucker	
5/23/36	C. C. Coons	Mucker	
5/23/36	W. E. Lake	Mucker	
5/14/36	T. M. Patten	Machinist	
5/21/36	Bart Green	Mucker	2/19/30
5/22/36	James Graham	Miner	9/15/35
5/23/36	J. F. Oddonetto	Mucker	
5/13/36	Albert de la Torre	Miner	
5/21/36	T. W. Glasscock	Mucker	7/31/31
5/23/36	M. M. Carlisle	Mucker	11/7/35
5/22/36	Rosendo Garretson	Machinist	7/11/32
5/22/36	S. A. Sinclair	Electrician	9/12/30
5/26/36	*Hilary Page	Mucker	4/30/36

Exhibit A, Attached to Stipulation.

Date hired	*Name*	*Occupation*	*If had previous service: Last day worked*
5/26/36	J. F. Kasun	Mucker	
5/26/36	W. A. Andrews	Mucker	
5/26/36	D. L. Jarvis	Mucker	
5/26/36	Steve Kroh	Mucker	
5/26/36	Van Bingham	Mucker	
5/26/36	R. F. J. Wicke	Mucker	
5/26/36	John Bendixen	Mucker	8/30/35
5/26/36	A. O. Ballard	Mucker	10/6/27
5/28/36	Constantin Apsouri	Mucker	
5/28/36	A. A. Shelton	Mucker	
5/28/36	I. N. Oliver	Mucker	
5/30/36	R. F. Hilburn	Mucker	8/16/35
5/28/36	C. D. Puckett	Mucker	
5/28/36	A. V. Childers	Mucker	
5/28/36	W. J. Knox	Miner	9/11/35
5/28/36	A. J. Ryan	Mucker	4/18/32
5/30/36	T. E. Colford, Jr.	Mucker	9/15/35
5/29/36	*W. A. Stevens	Mucker	2/27/36
5/16/36	Dr. H. W. Rice	Chief Surgeon	
5/18/36	*Pearl A. Wilcox	Librarian	11/16/35
5/28/36	*Jewell Lee	Hospital nurse	
6/2/36	M. J. Sheridan	Mucker	
6/2/36	J. C. Andreas	Mucker	
6/1/36	J. B. McPherson	Mucker	
6/1/36	G. F. A. Deshler	Mucker	
6/1/36	G. D. Allen	Mucker	
5/30/36	L. V. Hunt	Mucker	
6/2/36	John Kasun, Jr.	Mucker	
6/2/36	A. G. McClure	Mucker	
6/2/36	L. C. Clark	Mucker	
6/2/36	R. C. James	Mucker	
6/1/36	J. F. Hall	Mucker	
6/1/36	W. C. Sampson	Mucker	
6/1/36	E. D. Miller	Mucker	
6/1/36	A. J. Whelan	Mucker	
6/1/36	F. C. Alexander	Mucker	
6/1/36	E. F. Insley	Mucker	
6/2/36	Tom McGarry	Mucker	8/30/35
6/4/36	J. P. Chavez	Laborer	
6/5/36	L. M. Talbert	Mining engineer	
6/1/36	E. L. Brooks	Janitor	
6/4/36	Placido Navarro	Laborer	4/21/21
6/4/36	R. S. Lopez	Laborer	10/28/31
6/4/36	Silvano Acevas	Laborer	
6/9/36	A. W. Wigington	Miner	
6/9/36	S. W. Miller	Miner	12/19/29
6/9/36	A. L. Taylor	Miner	
6/9/36	J. B. Dannelley	Miner	1/9/29
6/9/36	C. J. Sabin	Electrician	9/15/28
6/13/36	F. A. Parson	Mucker	
6/13/36	B. R. Adams	Mucker	
6/13/36	B. C. Romero	Laborer	
6/13/36	J. M. Carbajal	Laborer	
6/13/36	J. S. Dymock, Jr.	Mucker	9/6/35
6/13/36	G. R. Sinclair	Mucker	9/11/35
6/11/36	C. E. Catt	Mucker	10/12/35

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
6/13/36	M. A. Boss	Mucker	9/3/35
6/13/36	J. W. Cameron	Mucker	
6/13/36	Pedro Ortiz	Laborer	10/28/31
6/13/36	Carlos Gonzales	Laborer	4/6/28
6/6/36	*Mrs. Hilda Andrews	Hospital nurse	5/31/36
6/17/36	G. A. Rylance	Mucker	
6/17/36	J. E. Werner	Mucker	
6/17/36	A. A. Andress	Machinist	
6/16/36	Dr. Joseph Saba	Physician	
6/22/36	H. Z. Stuart	Mucker	
6/22/36	E. D. Crowell	Welder	
7/9/36	F. E. Baumkirchner	Mucker	
7/8/36	G. W. Phears	Mucker	
7/8/36	T. F. Perkins	Mucker	
7/8/36	V. S. Broadus	Mucker	
7/8/36	W. T. McSpadden	Mucker	
7/8/36	J. C. Wilson, Jr.	Mucker	
7/8/36	C. M. Mills	Mucker	
7/8/36	W. P. Sertic	Mucker	
7/9/36	L. C. Beecroft	Mucker	
7/9/36	E. F. Carnes, Jr.	Mucker	
7/9/36	W. J. Hill	Mucker	
7/9/36	H. C. Allen	Mucker	
7/9/36	W. C. Ryan	Mucker	
7/9/36	H. H. Hunt	Miner	
7/8/36	M. H. Taylor	Mucker	7/7/30
7/8/36	*Jim Vercellino	Mucker	3/21/36
7/9/36	W. E. Featherman	Miner	5/29/24
7/10/36	D. D. Ryan	Mucker	
7/10/36	J. D. Wright	Mucker	
7/10/36	Jerome Oliver	Mucker	
7/10/36	L. A. Goodwin	Mucker	
7/10/36	J. P. Ferry, Jr.	Mucker	
7/10/36	J. F. Riley	Mucker	
7/10/36	C. E. Vandervort	Mucker	
7/10/36	R. E. Carpenter	Mucker	
7/10/36	F. H. McCulloch	Mucker	
7/10/36	*John Lemon	Mucker	6/9/36
7/11/36	Leroy Callison	Mucker	
7/11/36	Ray Coomer	Mucker	6/9/36
7/10/36	*J. L. McNeil	Miner	6/13/36
7/14/36	J. A. Andrews	Mucker	
7/14/36	J. H. Thomas	Mucker	
7/15/36	D. F. Keeler	Mucker	
7/14/36	J. B. Douthett	Mucker	
7/15/36	Zacarias Luque, Jr.	Laborer	
7/15/36	H. E. Story	Machinist	
7/15/36	J. A. de Gomez	Mucker	8/23/34
7/15/36	Eduardo Cordova	Laborer	
7/15/36	Alejandro Urias	Laborer	6/1/29
7/21/36	R. R. Schmid	Mucker	
7/21/36	D. G. MacKinnon	Mucker	
7/21/36	H. L. Diffie	Mucker	
7/21/36	J. W. Diffie	Mucker	
7/21/36	J. P. Manning, Jr.	Mucker	
7/21/36	Jack Mardon	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
7/21/36	W. J. Ferrell	Mucker	
7/21/36	H. L. Childress	Mucker	
7/21/36	R. V. Tate	Mucker	
7/21/36	Patrick Whelan	Mucker	
7/20/36	Ygnacio Barragon	Laborer	
7/25/36	Dominick Catero	Mucker	
7/24/36	J. R. Lewis	Boilermaker	
7/25/36	*G. L. Brady	Miner	6/9/36
7/24/36	J. M. Valenzuela	Laborer	11/5/31
7/28/36	R. E. Lee	Miner	
7/28/36	J. A. Lee	Mucker	
7/28/36	W. W. Peters	Mucker	
7/28/36	Gordon Davis	Mucker	
7/28/36	G. J. Snyder	Mucker	
7/28/36	R. E. Barackman	Mucker	
7/28/36	T. L. Townsend	Mucker	
7/28/36	Albert Sharpe	Mucker	
7/28/36	Lauren Hays	Mucker	
7/28/36	W. G. Brown	Mucker	
7/28/36	Edward Schaefer	Miner	
7/30/36	E. F. Adams	Miner	
7/30/36	Leonard Wootan	Mucker	
7/30/36	W. B. Walker	Miner	
7/30/36	*Mrs. Rosella Hill	Hospital nurse	
7/30/36	John Thompson	Miner	4/30/30
7/13/36	*Mrs. Hilda Andrews	Hospital nurse	
7/4/36	*Mrs. Jewell Lee	Hospital nurse	
7/16/36	David Vonk	Dispensary clerk	
7/28/36	Mrs. Hilda Andrews	Hospital nurse	
8/1/36	D. W. Clayton	Mucker	
8/1/36	R. A. Costey	Mucker	
8/1/36	Dominick Aira	Mucker	
8/1/36	H. J. Kimbrough	Mucker	
8/4/36	John Pajnich	Mucker	
8/4/36	Marion Ortkiese	Mucker	
8/4/36	D. D. Roberson	Mucker	
8/4/36	William Todd, Jr.	Mucker	
8/4/36	F. E. Roberson	Mucker	
8/4/36	Horace Dierking	Mucker	
8/4/36	J. D. Schandelmeier	Mucker	
8/4/36	D. L. Tyree	Mucker	
8/4/36	C. D. Sheldon	Mucker	
8/4/36	H. M. Thompson	Miner	2/6/36
8/4/36	Robert Fritz	Machinist	
8/10/36	J. O. Craig	Electrician	
8/11/36	V. O. Hardt	Mucker	
8/11/36	C. L. Riley	Mucker	
8/11/36	A. R. Moore	Mucker	
8/11/36	G. W. Bickle	Mucker	
8/11/36	D. M. Whitlow	Mucker	7/10/33
8/11/36	R. H. Kuhlmeyer	Mucker	6/24/36
8/15/36	D. W. Tilton	Mucker	
8/15/36	R. D. Parker	Mucker	
8/15/36	W. A. Hayes	Mucker	
8/13/36	J. S. Hughes	Mucker	
8/13/36	J. R. Mitchell	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
8/13/36	Albert Davis	Mucker	
8/13/36	L. B. Keith	Mucker	
8/13/36	Joe Veretti	Miner	
8/13/36	R. S. Walsh	Mucker	
8/13/36	H. L. Judd	Mucker	
8/15/36	Mike Sabo	Mucker	
8/14/36	E. L. Cooke	Mucker	
8/12/36	J. L. McDonald	Miner	6/12/36
8/13/36	R. O. Malle	Miner	
8/18/36	Fred Landers	Mucker	
8/18/36	J. E. Lillard	Mucker	
8/18/36	T. H. Wood	Mucker	
8/18/36	H. J. Tilton	Mucker	
8/18/36	R. S. Blanchard	Miner	3/22/29
8/16/36	Tom Lease	Mucker	4/30/30
8/18/36	T. L. Malone	Mucker	
8/17/36	W. T. Holt	Machinist helper	
8/20/36	L. W. Parten	Mucker	
8/20/36	V. R. Scheffler	Mucker	
8/29/36	V. A. Roberson	Mucker	
8/29/36	W. H. Phillips	Mucker	
8/20/36	R. W. Debnam	Mucker	
8/20/36	R. T. Howell	Mucker	
8/20/36	August Galigher	Miner	3/15/35
8/20/36	T. J. Kennedy	Miner	9/17/28
8/29/36	C. E. Doss	Mucker	
8/22/36	F. P. Trezise	Mucker	
8/22/36	H. E. Krohn	Mucker	
8/22/36	W. E. Kidder	Mucker	
8/22/36	C. C. Yates	Mucker	
8/22/36	G. C. Sanders	Mucker	
8/20/38	O. R. Smith	Mucker	
8/22/36	L. J. Landureth	Mucker	
8/22/36	Pete Gilland	Mucker	
8/22/36	W. H. Frasee	Mucker	
8/22/36	J. A. Clark	Mucker	
8/22/36	L. P. Dage	Carpenter	
8/24/36	W. G. Askew	Blacksmith helper	
8/24/36	T. L. Jordan	Blacksmith	
8/25/36	Jack Mardon	Mucker	8/20/36
8/24/36	B. L. Farnsworth	Mucker	
8/25/36	T. V. Miller	Mucker	
8/25/36	L. M. Hall	Mucker	
8/25/36	Frank Ramzinski	Mucker	
8/25/36	H. I. Staniger	Mucker	
8/25/36	Fowler Beach	Mucker	11/1/31
8/25/36	J. D. Pierce	Motorman	7/3/36
8/27/36	Robert Gresham	Mucker	
8/27/36	E. C. Greenwood	Mucker	
8/27/36	E. G. Chambers	Mucker	
8/27/36	C. W. McCollum	Mucker	
8/27/36	M. T. Breland	Mucker	
8/27/36	C. W. Weuthe	Mucker	
8/27/36	B. E. Haygood	Mucker	
8/27/36	H. F. Buntin	Mucker	
8/27/36	F. W. Younger	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous service: Last day worked
8/27/36	E. H. Strader	Mucker	
8/27/36	D. L. Farnsworth	Mucker	
8/27/36	J. E. Bullock	Mucker	
8/27/36	A. B. Allen	Mucker	11/1/29
8/28/36	L. H. McCormick	Miner	8/17/36
8/29/36	F. D. Bogenschutz	Miner	
8/29/36	Lawrence Seelig	Miner	
8/29/36	C. R. Nigh	Mucker	
8/29/36	W. N. Rafailovich	Mucker	
8/29/36	E. A. Randolph	Mucker	
8/29/36	B. D. Collier	Mucker	
8/29/36	T. I. Phillips	Mucker	
8/29/36	L. G. Burton	Mucker	
8/29/36	H. S. Kennedy	Mucker	
8/29/36	Bill Hensley	Mucker	
8/29/36	A. W. Frazier	Mucker	
8/29/36	J. J. Gordon	Mucker	
8/29/36	W. T. Edwards	Mucker	
8/29/36	M. W. Bowman	Mucker	
8/29/36	W. A. Graham	Mucker	
8/29/36	T. B. Noland	Miner	
8/29/36	M. R. Bigham	Mucker	
8/31/36	*W. T. McSpadden	Mucker	8/29/36
8/29/36	C. W. Currier	Mucker	
8/1/36	Nellie Bird	Hotel maid	
8/17/36	H. M. Kraker	Hospital clerk	
8/20/36	Rose Bentley	Hospital nurse	
8/15/36	*Mrs. J. E. Jordan	Hospital nurse	
8/22/36	*Doris E. Knowles	Hospital nurse	
9/1/36	Jos. H. Martineau	Mucker	
9/1/36	Sidney Holder	Mucker	
9/1/36	N. J. Highfield	Mucker	
9/1/36	La Wayne Hussey	Mucker	
9/1/36	R. J. McDonald	Mucker	
9/1/36	R. F. Hobbs	Mucker	
9/1/36	Charles Brandon	Mucker	
9/1/36	Arden Rickard	Mucker	
9/1/36	L. M. Jones	Miner	1/8/25
9/1/36	A. M. Schupbach	Mucker	
9/1/36	H. S. Hatch	Miner	8/23/23
9/1/36	Clyde Davis	Mucker	
9/3/36	G. T. Modesette	Mucker	
9/3/36	Valentine Payne	Mucker	
9/3/36	Woodrow Walters	Mucker	
9/3/36	A. A. Scheffler, Jr.	Mucker	
9/3/36	M. O. Riordan	Mucker	
9/3/36	F. A. Rutledge	Mucker	
9/3/36	S. L. Fellers	Mucker	
9/3/36	Rudolph Sassoe	Mucker	
9/3/36	N. M. Benderach	Mucker	
9/3/36	R. W. Halladay	Mucker	
9/3/36	E. F. Hagins	Mucker	
9/3/36	Manuel Galaz	Laborer	
9/3/36	Ernesto Trejo	Laborer	11/14/31
9/3/36	Gilberto Chavez	Laborer	12/31/31
9/3/36	Antonio Garcia	Laborer	

Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous service: Last day worked
9/3/36	Enrique Torres	Laborer	3/5/30
9/5/36	J. R. Hall	Mucker	
9/5/36	Homer Burkett	Mucker	
9/5/36	Carl Hensley	Mucker	
9/5/36	J. L. Chapman	Mucker	
9/5/36	E. E. Haddix	Mucker	
9/4/36	Raymond Assmer	Laborer	
9/4/36	Arnold Carbajal	Laborer	
9/5/36	C. C. Rosson	Miner	1/25/30
9/5/36	Carmen Coronado	Laborer	10/28/31
9/9/36	W. E. Bowers	Mucker	
9/9/36	V. C. Gentner	Mucker	
9/5/36	R. W. Merkley	Mucker	
9/9/36	S. C. Merkeley	Mucker	
9/9/36	R. M. Cotton	Mucker	
9/9/36	C. E. Ham	Mucker	
9/9/36	O. L. Newbury	Mucker	8/1/35
9/9/36	L. L. Johnson	Mucker	8/31/30
9/9/36	A. C. Stuart	Miner	5/21/29
9/9/36	S. S. Foster	Mucker	4/30/30
9/10/36	Rex Loper	Mucker	
9/10/36	Bill Trezise	Mucker	
9/10/36	V. C. Johnston	Mucker	
9/10/36	F. A. Montgomery	Miner	7/18/30
9/10/36	Lester Skousen	Mucker	10/25/29
9/8/36	J. E. Schermerhorn	Clerk	
9/15/36	A. E. Curler	Mucker	
9/15/36	R. J. Cravey	Mucker	
9/15/36	Herman Ortkiese	Mucker	
9/15/36	H. M. Alexander	Mucker	
9/15/36	A. C. Jones	Mucker	
9/15/36	*W. F. Parker	Mucker	
9/15/36	H. M. Hunter	Mucker	
9/15/36	W. W. Adams	Mucker	
9/15/36	R. W. Reed	Mucker	
9/15/36	C. E. Wootan	Miner	
9/16/36	C. O. Martineau	Mucker	
9/17/36	C. F. Palmer	Mucker	
9/17/36	C. M. Zollman	Mucker	
9/17/36	F. A. Neal	Mucker	
9/17/36	Manuel Knipp	Mucker	
9/17/36	F. W. Oliver	Mucker	
9/17/36	R. D. Williamson	Mucker	
9/17/36	A. C. Jean	Mucker	
9/17/36	E. P. Donahue	Mucker	
9/17/36	H. J. Pearson	Mucker	
9/17/36	Carl Oliphant	Mucker	
9/17/36	A. K. Hill	Electrician	
9/17/36	W. A. Stubblefield	Electrician helper	
9/19/36	Marion Grenwelge	Mucker	
9/19/36	Cleo Evans	Mucker	
9/19/36	R. C. Wood	Miner	
9/19/36	M. R. Boone	Mucker	
9/19/36	J. E. H. Gray	Miner	
9/19/36	*J. L. Malone	Electrician helper	
9/19/36	A. E. Holstrom	Mucker	4/29/29

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
9/19/36	C. E. Evans	Miner	6/11/30
9/22/36	C. A. Saunders	Mucker	
9/22/36	R. E. Lowrance	Mucker	
9/22/36	A. J. Schwertner	Mucker	
9/22/36	O. S. Hulsey	Miner	
9/22/36	J. D. Whittle	Mucker	
9/22/36	Eduardo Guerra	Mucker	10/13/30
9/22/36	Armando Chavez	Laborer	
9/22/36	Juan Bernal	Laborer	
9/22/36	R. C. Martinez	Laborer	
9/22/36	F. M. Garcia	Laborer	
9/22/36	*J. P. McRae	Mucker	6/16/36
9/22/36	W. R. Williamson	Miner	
9/22/36	Francisco Lugo	Laborer	10/28/31
9/22/36	J. M. Ochoa	Laborer	9/12/30
9/24/36	H. G. Harris	Mucker	
9/24/36	G. B. Beard	Mucker	
9/24/36	H. W. Gregory	Mucker	
9/24/36	Anton Bedner	Mucker	
9/24/36	E. H. Higgins	Mucker	
9/24/36	M. R. Tovrea	Mucker	
9/24/36	C. O. Blair	Mucker	
9/24/36	W. W. Walters	Miner	2/15/29
9/24/36	Ramon Mendibles	Laborer	10/21/30
9/24/36	O. H. Porter	Miner	6/1/30
9/24/36	F. F. Kennedy	Miner	
9/24/36	Crespin Domingues	Laborer	7/26/28
9/26/36	W. F. Shields	Mucker	
9/26/36	E. G. Martin	Mucker	
9/26/36	Harry Thompson	Mucker	
9/26/36	Wayne Mayo	Mucker	
9/26/36	A. B. Linsley	Mucker	
9/26/36	Ray Jarvis	Mucker	
9/26/36	G. E. Taylor	Mucker	
9/26/36	W. L. Frazier	Miner	
9/23/36	Rafael Sonoqui	Laborer	9/30/30
9/29/36	Otto Ortkiese	Mucker	
9/29/36	H. R. Fryke	Mucker	
9/29/36	Roy Lynch	Mucker	
9/29/36	W. A. Day	Mucker	
9/29/36	Buford Armstrong	Mucker	
9/29/36	A. F. Oglesby	Mucker	
9/29/36	W. H. Johnson	Mucker	
9/29/36	C. A. Newsom	Mucker	
9/29/36	*T. L. Kester	Mucker	1/24/36
9/29/36	L. G. Stacey	Miner	6/9/27
9/29/36	A. J. Holland	Miner	
9/15/36	Lucille Bird	Hospital nurse	
9/26/36	*Hilda Andrews	Hospital nurse	
10/1/36	L. V. Reed	Miner	
10/1/36	A. J. Bear	Mucker	
10/1/36	T. F. Enos	Mucker	
10/1/36	Grant Wimberley	Mucker	
10/1/36	A. R. Crawford	Mucker	
10/1/36	T. J. Kearney	Mucker	
10/1/36	L. F. Hawkins	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
10/1/36	Harold Smith	Mucker	
10/1/36	H. J. Kading	Mucker	
10/1/36	A. B. Richardson	Mucker	
10/1/36	R. W. Burns	Mucker	
10/1/36	F. L. Knornschild	Carpenter	
10/1/36	*John A. DeGomez	Miner	9/11/36
10/1/36	J. J. Kelvey	Mucker	
10/1/36	C. B. French	Carpenter	
10/3/36	George Mason	Mucker	
10/3/36	W. F. Martin	Mucker	
10/3/36	H. T. Bagley	Mucker	
10/3/36	Franklin Daniel	Mucker	
10/3/36	C. H. Hill, Jr.	Mucker	
10/3/36	J. L. Cleveland	Mucker	
10/3/36	H. H. Harmon	Mucker	
10/3/36	J. T. Hancock	Mucker	
10/5/36	A. C. Combel	Machinist apprentice	
10/5/36	J. Louis Marko	Machinist apprentice	
10/5/36	John G. Munsey	Electrician apprentice	5/26/30
10/5/36	C. G. Wood	Chemist	
10/8/36	T. L. Herrington	Mucker	
10/8/36	Bill Younger	Mucker	
10/8/36	L. C. North	Mucker	
10/8/36	T. R. Reed	Mucker	
10/8/36	R. S. Wallace	Mucker	
10/8/36	C. J. Wright	Mucker	
10/8/36	D. H. Holt	Mucker	
10/8/36	R. G. Dickey	Mucker	
10/8/36	W. M. Cook	Mucker	
10/8/36	J. L. Peck	Mucker	
10/10/36	*E. W. Johnson	Miner	
10/13/36	F. C. Cawthon	Miner	
10/13/36	R. R. Roberts	Miner	
10/13/36	D. H. Spivey	Miner	5/11/36
10/10/36	B. D. Wimberley	Miner	
10/15/36	*Harold Webster	Miner	6/15/36
10/1/36	*Mrs. C. W. Wilcox	Librarian	
10/19/36	I. C. Miller	Mucker	
10/17/36	T. D. Bailly	Mucker	
10/17/36	E. V. Evans	Mucker	
10/17/36	A. A. Hufstutler	Mucker	
10/19/36	W. E. Taylor	Mucker	
10/21/36	C. G. Wheeler	Mucker	
10/17/36	J. N. Demas	Miner	
10/17/36	T. R. Latham	Mucker	
10/17/36	C. B. Cook	Mucker	
10/19/36	B. F. Jacobson	Mucker	
10/17/36	*P. F. Brown	Mucker	7/23/36
10/19/36	W. F. Ray	Miner	4/28/30
10/21/36	R. D. Hastie	Mucker	8/6/36
10/17/36	J. J. Payne	Mucker	
10/19/36	J. T. Turner	Mucker	
10/17/36	C. W. Carley	Miner	6/30/36
10/23/36	A. M. Allen	Mucker	
10/23/36	W. I. Hawkins	Mucker	
10/23/36	C. L. Carnahan	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
10/23/36	B. L. Wilmeth	Mucker	
10/21/36	J. H. Atkinson	Watchman	8/15/35
10/28/36	R. J. Wish	Mucker	
10/28/36	C. B. Duncan	Miner	
10/28/36	Monty Wathney	Miner	
10/28/36	E. C. Hibble	Mucker	
10/28/36	W. E. Hargis	Miner	
10/28/36	V. P. Kelly	Mucker	
10/28/36	*Arthur Detloff, Jr.	Miner	3/6/36
10/28/36	J. Q. Farrell	Miner	10/1/24
10/8/36	W. M. Miller	Mucker	
10/31/36	G. R. Pruitt	Mucker	
10/31/36	Emol Cavaness	Miner	4/25/27
10/13/36	*Hilda Andrews	Nurse	
10/1/36	*Doris E. Knowles	Nurse	
11/22/36	J. H. Henderson	Miner	10/23/36
11/3/36	*Bill Trezise	Boilermaker helper	10/27/36
11/2/36	S. E. Beach	Mucker	
11/2/36	A. R. Olney	Miner	
11/2/36	W. E. Pruitt	Mucker	
11/2/36	H. P. Dean	Mucker	
11/2/36	J. L. O'Brien	Mucker	
11/4/36	T. L. Dunlap	Mucker	
11/4/36	C. P. Cowling	Carpenter apprentice	
11/4/36	K. D. McPherson	Carpenter apprentice	
11/2/36	H. F. Campbell	Miner	
11/2/36	J. M. Atkins	Miner	3/24/30
11/2/36	C. R. Henderson	Miner	8/17/22
11/4/36	A. T. Hoy	Electrician apprentice	8/29/35
11/7/36	R. A. Cashell	Mkr	
11/7/36	E. R. Harmon	Mucker	
11/6/36	H. M. Jewell	Carpenter	
11/7/36	Millard Rouse	Miner	4/30/30
11/4/36	*Leroy Callison	Mucker	8/20/36
11/5/36	*G. A. Looman	Miner	10/31/36
11/5/36	Herbert Bednorz	Mucker	
11/10/36	J. E. Chantry	Mucker	
11/10/36	E. L. Blalock	Mucker	
11/10/36	J. C. Moore	Mucker	
11/10/36	P. K. McCollister	Mucker	
11/10/36	Robert Jackson	Mucker	
11/10/36	C. T. Everett	Mucker	
11/10/36	F. T. Baxter	Mucker	
11/10/36	L. H. Spilsbury	Mucker	
11/10/36	R. L. Williamson	Mucker	
11/10/36	R. W. Hamel	Mucker	
11/10/36	C. R. Wynes	Mucker	
11/12/36	Tony Maidic	Mucker	
11/12/36	Millard Atkins	Mucker	
11/12/36	T. L. Greenwood	Mucker	
11/12/36	W. H. Clark	Mucker	
11/12/36	W. H. Green	Mucker	
11/12/36	R. A. Barnette	Mucker	
11/12/36	G. E. Slaughter	Mucker	
11/12/36	Ralph Scott	Mucker	
11/12/36	C. M. Carley	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
11/12/36	A. D. Lawson	Miner	
11/12/36	R. R. McPeters	Mucker	
11/12/36	S. H. Alexander	Mucker	
11/12/36	M. L. Lynch	Mucker	
11/7/36	C. E. Jarnigan	Miner	
11/7/36	Horace Griffin	Hotel porter	
11/14/36	George Sandich	Watchman	
11/17/36	G. E. Nelson	Miner	
11/17/36	J. H. Hell	Mucker	
11/17/36	H. C. Pendergraft	Miner	
11/17/36	I. R. Van Cleve	Miner	
11/17/36	C. S. Bennett	Miner	
11/17/36	G. G. Page	Miner	
11/17/36	*D. I. Stutzman	Mucker	4/4/36
11/17/36	C. J. Rollins	Miner	5/29/31
11/12/36	W. W. Lowrence	Mucker	
11/12/36	Blanchie B. Ray	Stenographer	
11/17/36	Theodore Brooks	Hospital orderly	
11/20/36	R. P. Peck	Mucker	
11/21/36	V. B. Ackerson	Mucker	
11/21/36	Isaac D. McCoy	Miner	
11/19/36	C. H. Lively	Miner	
11/19/36	W. S. Crow	Miner	
11/19/36	J. A. Horvath	Miner	
11/21/36	J. E. Price	Mucker	
11/21/36	F. H. Johnson	Mucker	
11/19/36	C. A. Adams	Miner	
11/21/36	O. C. Stanbrough	Miner	
11/19/36	F. B. Campbell	Miner	8/11/27
12/1/36	M. F. Powers	Miner	
12/1/36	D. S. Craig	Mucker	
12/1/36	J. D. Hurley	Mucker	11/1/30
12/2/36	D. J. Shea	Mucker	
12/1/36	R. E. McKinnon	Miner	
12/1/36	N. T. Peterson	Miner	
12/1/36	Andrew Angle	Miner	12/30/29
12/1/36	W. P. Stensgaard	Machinist	
12/4/36	M. C. Martinez	Laborer	
12/4/36	J. M. Sotelo	Laborer	
12/4/36	E. M. Chavez	Laborer	
12/4/36	Paul Felix	Laborer	
12/4/36	Carlos Pena	Laborer	
12/1/36	*B. O. Simmonds	Mucker	8/7/36
12/1/36	*L. E. Harris	Miner	10/26/36
12/4/36	G. F. Garcia	Laborer	12/12/30
12/4/36	Francisco Rivera	Laborer	11/9/31
12/7/36	M. E. Lane	Mucker	
12/7/36	G. K. Housley	Miner	
12/7/36	A. R. Hicks	Miner	
12/7/36	L. L. Myers	Miner	
12/7/36	N. R. Combs	Pipeman	
12/7/36	*Howard Dennison	Mucker	3/10/36
12/9/36	W. E. Votaw	Miner	
12/9/36	Lloyd Votaw	Miner	
12/9/36	Flank Slaten	Mucker	
12/9/36	Earl Barnes	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
12/9/36	R. R. Corp	Miner	
12/9/36	C. W. Teeples	Miner	
12/9/36	T. L. Buford	Mucker	
12/9/36	Melvin Stockman	Miner	
12/14/36	*W. H. Clark	Mucker	12/1/36
12/14/36	*W. T. Edwards	Mucker	11/30/36
12/18/36	Carmen Moreno	Laborer	7/31/36
12/16/36	F. O. Lott	Mucker	
12/16/36	E. H. Stoner	Miner	
12/16/36	B. O. Johnson	Miner	
12/16/36	T. W. Bignell	Miner	8/28/30
12/16/36	L. O. Thompson	Mucker	
12/18/36	Charlie Shelton	Mucker	
12/18/36	O. E. Smith	Mucker	
12/18/36	T. P. Bostick	Mucker	
12/18/36	A. D. Thompson	Mucker	
12/18/36	J. H. Headrick	Mucker	
12/1[illegible]/36	O. R. Atkins	Mucker	
12/16/36	J. M. Dobler	Miner	
12/16/36	J. C. Tucker	Miner	
12/16/36	J. E. Linsley	Mucker	
12/18/36	G. L. Henry	Mucker	2/23/28
12/18/36	F. D. Wooley	Mucker	
12/18/36	C. E. Smith	Mucker	
12/16/36	I. B. Harper	Painter	
12/18/36	A. M. Mauldin	Pipeman helper	
12/16/36	J. F. Henderson	Electrician	
12/16/36	C. H. Salmons	Miner	11/29/27
12/16/36	Otho Fowler	Miner	11/25/29
12/16/36	F. J. Gallagher	Carpenter	10/23/30
12/22/36	W. C. Miller	Mucker	
12/21/36	*J. B. McPherson	Mucker	9/11/36
12/21/36	N. J. Miller	Miner	4/2/30
12/21/36	*W. P. Sertic	Mucker	9/5/36
12/21/36	J. A. Smith	Mucker	4/12/30
12/26/36	J. L. Gomez	Miner	11/25/36
12/28/36	J. M. Pilarczyk	Mucker	
12/28/36	C. W. Wittstruck	Miner	
12/29/36	*C. E. Catt	Mucker	10/31/36
12/29/36	John Snyder	Miner	4/30/30
12/29/36	Ernest Snyder	Miner	4/30/30
12/29/36	M. J. Cowan	Miner	6/9/36
12/30/36	H. K. Spilsbury	Mucker	
12/31/36	*J. L. Hedgecock	Miner	8/17/36
12/31/36	Crate Stanbrough	Miner	10/10/27
12/31/36	L. J. Robison	Mucker	6/11/29
12/21/36	*D. F. Vonk	Dispensary clerk	
12/24/36	*K. E. Estes	Dispensary clerk	
1/1/37	Goeth Garnett	Mucker	
1/1/37	Clyde Hendricks	Mucker	
1/1/37	Ike Gorman	Mucker	
1/1/37	J. F. Teran	Laborer	
1/1/37	Porfirio De Leon	Laborer	
1/1/37	Reynaldo E. Duron	Laborer	9/26/32
1/1/37	J. S. Guillen	Laborer	
1/1/37	Antonio F. Ohton	Laborer	
1/1/37	Dionicio Moreno	Laborer	3/5/30

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service. Last day worked*
1/4/37	Glen O'Leary	Mucker	
1/4/37	K. E. Lund	Miner	
1/5/37	Omar Doby	Mucker	
1/5/37	P. H. Isbell	Mucker	
1/5/37	J. P. Walters	Mucker	
1/5/37	B. B. Lovelady	Miner	
1/5/37	L. C. Wright	Mucker	
1/5/37	C. R. Fritz	Machinist helper	
1/4/37	J. E. Greene	Blacksmith helper	
1/5/37	J. M. Lucero	Miner	7/3/36
1/5/37	M. D. Coggins	Mucker	6/14/28
1/5/37	J. N. Toelkes	Miner	4/30/30
1/5/37	E. B. Munson	Tool nipper	
1/7/37	J. P. Spilsbury	Mucker	
1/7/37	A. J. Hallsted	Mucker	
1/9/37	E. H. Childers	Mucker	
1/9/37	H. G. Wallis	Mucker	
1/9/37	M. J. Wohler	Mucker	
1/9/37	M. B. Lovett	Mucker	
1/9/37	G. S. Nelson	Mucker	
1/7/37	H. E. Cobb	Mucker	
1/7/37	L. A. Webb	Mucker	
1/9/37	F. W. Sanders	Miner	
1/9/37	R. M. Wilson	Mucker	
1/9/37	J. L. Parnell	Mucker	
1/9/37	Gurney Dunham	Mucker	
1/9/37	B. H. Greer	Mucker	
1/9/37	G. E. Barnett	Mucker	
1/7/37	P. M. Hunt	Mucker	
1/9/37	J. D. E. Dixon	Mucker	
1/9/37	J. D. Mahoney	Mucker	
1/8/37	Fernando M. Ochoa	Mucker	
1/7/37	Canuto Sena	Laborer	
1/8/37	P. C. Llanez, Jr.	Laborer	
1/7/37	*H. H. Hunt	Miner	9/4/36
1/7/37	J. G. A. Junttola	Mucker	
1/7/37	W. S. Lynch	Mucker	
1/7/37	A. V. Massett	Mucker	2/14/29
1/7/37	George Gagnon	Miner	10/17/27
1/9/37	V. J. Dugie	Miner	
1/9/37	S. W. McNair	Miner	5/8/29
1/11/37	E. L. Orton	Miner	
1/11/37	G. E. Anderson	Mucker	
1/11/37	Archie Burns	Mucker	
1/11/37	S. F. J. Jones	Mucker	
1/11/37	P. L. Smith	Miner	
1/11/37	L. L. Pruett	Mucker	
1/11/37	W. W. Gregg	Miner	
1/11/37	Cliff Cannon	Miner	
1/11/37	R. E. Burns	Boilermaker helper	
1/4/37	C. O. Bloomquist	Clerk	
1/11/37	Kohn Rooney	Miner	7/29/36
1/11/37	*M. K. Jean	Miner	10/31/36
1/13/37	J. M. Watson	Miner	
1/13/37	B. K. Gillespie	Miner	
1/13/37	M. W. Bouldin	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
1/13/37	E. N. Helgeson	Miner	
1/13/37	O. E. Edwards	Miner	
1/13/37	F. L. Schaunaman	Miner	
1/13/37	Clair Nielson	Mucker	
1/13/37	F. L. Coons	Mucker	
1/13/37	C. E. Frizzell	Miner	
1/13/37	O. D. Booth	Miner	
1/13/37	C. W. Deeter	Miner	
1/13/37	E. W. Markham	Carpenter	
1/13/37	O. H. Mathewsom	Boilermaker apprentice	
1/12/37	Lee Griffin	Janitor	
1/13/37	Claude Tucker	Miner	7/17/30
1/13/37	T. R. Bell	Miner	9/8/36
1/15/37	W. B. Urquhart	Miner	
1/15/37	B. F. Brown	Mucker	
1/15/37	J. C. Shultz	Mucker	
1/15/37	E. J. Delpaz	Miner	
1/15/37	R. R. Rowan	Miner	
1/15/37	D. E. Hensley	Mucker	
1/15/37	C. R. Van Cleve	Mucker	
1/15/37	H. E. Fanjoy	Electrician	
1/15/37	C. E. Luna	Miner	3/14/27
1/18/37	G. B. Adcock	Mucker	
1/18/37	W. M. Whitehill	Miner	
1/18/37	N. F. Hazen	Miner	
1/18/37	S. J. Brockman	Miner	
1/18/37	R. E. Mundell	Mucker	
1/18/37	S. J. Adams	Carpenter	
1/18/37	A. J. King	Pipeman helper	
1/18/37	J. H. Ronning	Electrician	
1/18/37	*D. T. Hunt	Miner	11/30/36
1/20/37	G. L. Allen	Miner	
1/20/37	Floyd Host	Miner	
1/20/37	A. E. Doolittle	Miner	
1/20/37	K. D. Howell	Miner	
1/20/37	C. G. Medley	Miner	
1/20/37	J. P. Carter	Miner	
1/20/37	A. M. Mattingly	Electrician	
1/20/37	*F. H. McCulloch	Mucker	1/13/37
1/20/37	*W. J. Hill, Jr.	Mucker	9/19/36
1/23/37	E. B. Brooks	Miner	9/15/35
1/23/37	C. R. Lewis	Miner	
1/23/37	M. D. Averitt	Mucker	
1/23/37	George Wilson	Miner	
1/23/37	L. P. Johnson	Miner	
1/23/37	Joe Del Santo	Blacksmith helper	
1/23/37	*T. J. Salmon	Miner	7/31/36
1/23/37	F. H. Heckler	Mucker	8/16/29
1/23/37	*James Dearing	Miner	1/4/37
1/23/37	A. M. Harmon	Mucker	2/28/31
1/23/37	W. R. Kumero	Boilermaker	
1/18/37	Kenneth Sellers	Assayer	5/9/36
1/26/37	Frank Carothers	Miner	
1/26/37	O. M. Thompson	Miner	
1/26/37	M. A. Torres	Laborer	
1/26/37	J. D. Cooper	Mucker	7/6/28

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
1/26/37	R. J. Mann	Miner	
1/26/37	Si Cornett	Miner	9/15/35
1/26/37	Pedro Carino	Laborer	1/11/30
1/28/37	L. H. Sevey	Miner	
1/28/37	P. R. Congrove	Miner	
1/28/37	H. C. Miller	Miner	
1/28/37	V. A. Orton	Miner	
1/28/37	George Onufrock	Miner	
1/28/37	C. L. Smythe	Miner	
1/28/37	E. D. Johnson	Pipeman	
1/30/37	L. B. Cary	Mucker	1/13/37
1/11/37	Dr. G. W. Patterson	Physician	
1/27/37	C. M. Wolcott	Clerk	
1/25/37	Leona McGuire	Hotel maid	
1/8/37	Pat Lucas	Janitor	
1/28/37	James Coleman	Hospital orderly	
1/28/37	Colleen Smith	Hotel maid	
1/26/37	Stephanie Kraker	Hospital nurse	
1/28/37	Bonnie Key	Hotel maid	
1/29/37	H. J. Hierl	Chemist	
1/25/37	*Theodore T. Brooks	Hospital orderly	
1/22/37	Nine Barr	Hospital nurse	
1/16/37	*Rosella Hill	Hospital nurse	
1/22/37	*Caroline Nixon	Hospital nurse	
2/1/37	B. L. Kinnard	Miner	
2/1/37	J. G. Mitchum	Miner	
2/1/37	Steve Davids	Miner	
2/1/37	R. M. Diviney	Miner	
2/1/37	H. W. Goos	Miner	
2/1/37	Everett Duncan	Miner	
2/1/37	S. G. Beckworth	Miner	
2/1/37	L. P. Anderson	Miner	
2/1/37	W. N. Harris	Miner	6/15/29
2/1/37	S. M. Akin	Mucker	
2/3/37	C. L. Chavez	Laborer	
2/3/37	Ambrosio Sanchez	Laborer	
2/3/37	G. Y. Valenzuela, Jr.	Laborer	
2/3/37	G. R. Martinez	Laborer	
2/3/37	D. G. Moreno	Laborer	
2/1/37	G. J. Simley	Pipeman	
2/1/37	J. B. Hunter	Pipeman	
2/3/37	Angelo Hirales	Laborer	
2/3/37	S. P. Savedra	Trackman	10/29/31
2/3/37	A. S. Cornejo	Trackman	
2/3/37	E. P. Mendoza	Trackman	
2/3/37	M. F. Thompson	Miner	
2/1/37	J. A. Hoffman	Miner	
2/1/37	C. L. Morris	Miner	9/11/36
2/1/37	T. H. Conger	Electrician	
2/3/37	Simon Pacheco	Trackman	10/19/29
2/4/37	Germano Benedetti	Miner	
2/4/37	Clyde Whipple	Miner	
2/4/37	A. A. Gray	Miner	
2/4/37	R. D. Barron	Mucker	8/30/27
2/4/37	W. G. Ashman	Mucker	3/8/32
2/4/37	*C. W. Cayley	Miner	1/12/37

Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous service: Last day worked
2/4/37	*Carl Henderson	Miner	11/15/36
2/4/37	Florian Pilarczyk	Miner	6/8/28
2/6/37	J. H. Hatton	Mucker	
2/6/37	H. B. Staas	Miner	
2/6/37	W. C. Ogle	Miner	
2/6/37	John Peterson	Miner	
2/6/37	E. F. Allen	Miner	
2/6/37	G. W. Scott	Miner	
2/6/37	J. C. Roots	Miner	
2/6/37	W. R. Scott	Miner	
2/9/37	E. W. Wagner	Mucker	
2/9/37	R. O. Hickman	Mucker	
2/9/37	Jack Hawn	Miner	
2/9/37	J. R. Turnbull	Miner	
2/9/37	G. M. Anderson	Mucker	
2/9/37	S. E. Cain	Mucker	
2/9/37	R. C. Ayala	Laborer	
2/9/37	*C. T. Bagley	Miner	
2/9/37	N. A. Bell	Miner	
2/9/37	A. L. Avilez	Laborer	3/19/30
2/11/37	J. L. McCadden	Miner	
2/11/37	H. O. Williams	Miner	
2/11/37	B. B. Bailey	Mucker	
2/11/37	*D. M. Whitlow	Mucker	9/30/36
2/11/37	J. C. Baldwin	Miner	
2/11/37	I. E. Short	Miner	10/15/25
2/13/37	G. L. Elston	Miner	
2/13/37	A. C. Linn	Miner	
2/13/37	H. B. Cares	Miner	
2/13/37	Ambrose Latimer	Miner	
2/13/37	R. E. Davenport	Mucker	
2/13/37	J. C. Hedgecock	Mucker	
2/13/37	D. G. Tyler	Mucker	
2/13/37	Wade Lacey	Miner	
2/13/37	W. L. Humphries	Mucker	
2/13/37	B. E. Roberts	Miner	2/16/31
2/13/37	*Roy Lynch	Miner	1/31/37
2/13/37	J. W. Evans	Miner	9/4/36
2/12/37	*I. D. McCoy	Miner	2/8/37
2/12/37	W. N. Rushin	Mucker	
2/12/37	H. R. Wilcox	Mucker	
2/12/37	W. E. Tomkinson	Mucker	
2/12/37	H. G. Houston	Mucker	
2/13/37	*Harry L. Kope	Electrician helper	7/31/36
2/15/37	E. M. Holbrook	Electrician	
2/12/37	J. G. Benites	Laborer	
2/13/37	S. J. Hoener	Miner	1/16/37
2/16/37	J. E. Dawson	Watchman	2/10/37
2/16/37	A. J. Olander	Mucker	
2/16/37	A. J. Shank	Miner	
2/16/37	W. A. Carnahan, Jr.	Mucker	
2/15/37	R. R. Wines	Mucker	
2/15/37	J. W. Muldoon	Mucker	
2/15/37	R. W. Harris	Mucker	
2/15/37	R. E. Fletcher	Mucker	
2/15/37	N. A. Haynes	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service. Last day worked*
2/15/37	O. L. Roberts	Miner	
2/15/37	J. C. Mathis	Miner	
2/15/37	R. H. Stewart	Miner	
2/16/37	C. D. Cotton	Miner	
2/16/37	G. R. Johnson	Mucker	
2/16/37	M. H. Fullenwider	Miner	
2/16/37	H. J. Fullenwider	Miner	
2/16/37	H. P. Roberts	Miner	
2/15/37	F. E. Nuno	Miner	
2/13/37	C. R. Coleman, Jr.	Janitor	
2/1/37	Edith Wiley	Nurse	
2/16/37	*J. E. Massie	Miner	12/14/36
2/16/37	V. J. Beriendis	Mucker	7/31/35
2/16/37	John Flynn	Watchman	8/7/31
2/2/37	*Margery Jordan	Nurse	
2/17/37	C. E. Clark	Miner	
2/17/37	J. F. Stapley	Miner	
2/17/37	C. L. Nutter	Miner	
2/17/37	I. W. Carpenter	Miner	
2/17/37	J. A. Pierce	Mucker	
2/17/37	Clark (Ted) Gilland	Mucker	
2/17/37	F. A. Franklin	Mucker	
2/17/37	Olof Wade	Mucker	
2/17/37	C. W. Ravenscraft	Miner	
2/17/37	Norbin C. Warhurst	Miner	
2/17/37	P. A. O'Brien	Miner	
2/17/37	L. A. Lee	Miner	12/23/29
2/17/37	F. W. Pinkerton	Mucker	11/23/26
2/18/37	D. J. Williams	Miner	
2/19/37	J. E. Sherley	Miner	
2/19/37	J. W. Congrove	Miner	
2/19/37	J. W. Prescott	Mucker	
2/19/37	J. J. Holton	Mucker	
2/19/37	H. F. Ramsey	Miner	
2/22/37	H. O. Bass	Miner	
2/22/37	M. B. Walden	Miner	
2/22/37	George Snodgrass	Miner	
2/22/37	J. M. Karvonen	Miner	
2/22/37	J. D. Gilman	Carpenter	
2/22/37	F. J. Murphy	Machinist	
2/22/37	C. F. Dahlgren	Mucker	
2/22/37	L. M. Gorman	Mucker	
2/22/37	C. C. Brashear	Carpenter	
2/24/37	John O'Malley	Miner	4/4/30
2/24/37	H. W. Preston	Mucker	
2/24/37	R. M. Brooke	Mucker	
2/24/37	S. F. Wickham	Mucker	
2/24/37	P. C. Lawless	Miner	
2/24/37	H. L. Foreman	Miner	
2/24/37	James Tooley	Boilermaker	
2/24/37	A. G. Mason	Carpenter	
2/24/37	J. J. Cannon	Handyman	4/27/32
2/27/37	A. W. Constantine	Miner	
2/27/37	R. G. Liebmann	Miner	9/1/28
2/22/37	*K. E. Estes	Diepensary clerk	
2/23/37	*T. T. Brooks	Hospital orderly	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
3/1/37	R. L. Cuyler	Miner	
3/1/37	T. B. Hollimon	Miner	
3/1/37	D. G. McBryde	Mucker	
3/1/37	J. H. Kridel	Miner	
3/1/37	E. W. Kelly	Mucker	
3/1/37	H. W. Lyth	Carpenter	
3/1/37	Robert Simpson	Carpenter	
3/1/37	C. F. Deiro	Miner	7/25/29
3/1/37	J. A. Church	Miner	
3/1/37	Ernest MacDougall	Machinist helper	8/16/35
3/2/37	J. C. Kelly	Miner	
3/2/37	L. B. Collum	Miner	
3/2/37	B. H. Cauley	Miner	
3/2/37	O. E. Dillon	Miner	
3/2/37	R. A. Deets	Mucker	
3/2/37	E. D. Dickerson	Miner	
3/2/37	Patrick Evans	Miner	10/23/28
3/3/37	J. J. Martin	Miner	
3/3/37	F. F. Cooper	Miner	
3/3/37	H. O. Thornton	Mucker	
3/3/37	L. J. de Montegre	Miner	
3/3/37	M. E. Mitchell	Miner	
3/3/37	V. D. Collum	Miner	
3/3/37	C. G. McGuire	Miner	
3/4/37	D. O. Pendergraft	Mucker	
3/3/37	O. F. Tallant	Mucker	
3/3/37	E. C. Gregory	Boilermaker	
3/3/37	T. S. Gough	Blacksmith	
3/2/37	*G. W. Scott	Mucker	2/27/37
3/2/37	*V. B. Ackerson	Mucker	2/20/37
3/3/37	*G. L. Weatherford	Mucker	11/30/36
3/3/37	*H. L. Burkett	Mucker	10/22/36
3/3/37	C. J. Copeland	Pipeman helper	9/11/29
3/5/37	R. M. Orner	Miner	
3/5/37	A. B. Willemoes	Mucker	
3/5/37	C. E. Roden	Mucker	
3/5/37	R. J. Brucks	Mucker	
3/5/37	J. L. White	Miner	
3/5/37	Roy Stone	Mucker	
3/5/37	E. H. Oneal	Draftsman	
3/5/37	J. N. Oliver	Miner	4/30/30
3/8/37	C. G. Woodworth	Mucker	
3/8/37	S. H. Stauss	Miner	
3/8/37	R. W. Stauss	Miner	
3/8/37	R. J. Arnold	Mucker	
3/8/37	C. A. Van Troba	Miner	
3/8/37	Marvin Thompson	Mucker	
3/8/37	J. L. Beiler	Miner	
3/8/37	W. H. Crossland	Mucker	
3/8/37	F. I. Lindau	Draftsman	
3/8/37	D. M. Shaw	Mining engineer	
3/10/37	L. W. Williams	Mucker	
3/10/37	F. J. Miller	Mucker	
3/10/37	A. H. Turley	Mucker	
3/10/37	T. R. Blair	Mucker	
3/10/37	Cecil Williams	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
3/10/37	C. E. Maxwell	Pipe fitter	
3/12/37	W. A. Smith	Mucker	7/9/28
3/12/37	J. R. Campbell	Mucker	
3/12/37	*W. J. Ferrell	Mucker	9/5/36
3/12/37	J. F. Kenney	Mucker	11/30/36
3/12/37	J. F. Kries	Miner	6/30/36
3/3/37	*Margery Jordan	Nurse	
3/15/37	G. M. Williams	Mucker	
3/15/37	Fred Doby	Mucker	
3/15/37	W. L. Althaus	Mucker	
3/15/37	B. E. Mayo	Mucker	
3/15/37	William Rogers	Mucker	
3/15/37	C. V. Jarrett	Mucker	
3/15/37	L. C. Jossart	Clerk	
3/15/37	R. D. Sertic	Hotel clerk	
3/16/37	*Jack Hawn	Miner	3/8/37
3/15/37	P. B. Smith	Mucker	3/15/37
3/17/37	J. W. Evans	Miner	
3/17/37	W. F. Doeltz	Draftsman	
3/17/37	W. R. Mayo	Miner	4/30/30
3/17/37	J. D. Hodges	Miner	11/24/36
3/17/37	Bob Gray	Miner	
3/17/37	G. L. Dungan	Miner	
3/19/37	J. J. Ward	Miner	
3/19/37	C. W. Brown	Miner	
3/19/37	Fred Randolph	Miner	
3/19/37	Kenneth Crowder	Miner	
3/19/37	J. C. Hutchison, Jr.	Painter helper	
3/19/37	Ralph Tomblin	Miner	
3/19/37	J. A. Stevens	Miner	11/15/33
3/19/37	Alvin Higgins	Miner	
3/19/37	B. H. Helms	Pipefitter	
3/22/37	W. W. Little	Mucker	
3/22/37	D. C. Johnston	Miner	
3/22/37	D. B. Byfield	Miner	
3/22/37	J. V. Cook	Miner	
3/22/37	F. R. Dawson	Miner	
3/22/37	Z. D. Hailey	Miner	
3/22/37	J. R. Hansen	Miner	
3/23/37	H. L. Burkett	Mucker	3/16/37
3/22/37	J. L. Anderson	Miner	
3/22/37	W. M. Dinsmore	Miner	4 /14/26
3/22/37	Ernest Martineau	Miner	6/10/35
3/22/37	C. B. Valenzuela	Laborer	
3/24/37	E. L. Nelson	Miner	
3/24/37	R. M. Wilder	Miner	
3/24/37	Milburn Meadows	Mucker	
3/24/37	W. M. Miller	Miner	
3/24/37	L. M. Pastorius	Miner	
3/24/37	O. R. Harzman	Electrician	
3/22/37	Juan Ramirez	Laborer	
3/24/37	R. R. Angle	Mucker	1/13/30
3/24/37	A. F. Carter	Mucker	
3/24/37	*A. F. Oglesby	Mucker	11/15/35
3/26/37	R. C. Skinner	Miner	
3/27/37	A. R. Glasscock	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
3/27/37	H. H. Buckner, Jr.	Miner	
3/27/37	H. M. Bailey	Electrician	
3/27/37	A. C. Fellers, Jr.	Electrician	
3/27/37	A. L. Coltrin	Electrician	
3/27/37	*J. A. Hoffman	Miner	3/27/37
3/29/37	A. L. Duncan	Miner	
3/29/37	S. F. Gray	Miner	
3/29/37	Ernest Stewart	Mucker	
3/29/37	R. D. Frosco	Mucker	
3/29/37	P. V. Hirales	Laborer	
3/29/37	H. M. Del Campo	Laborer	
3/29/37	J. A. Morrow	Miner	5/6/29
3/29/37	R. L. Hodgson	Miner	
3/29/37	E. F. Miller	Warehouseman	
3/26/37	*K. E. Estes	Dispensary clerk	
4/1/37	L. F. Harris	Mucker	
4/1/37	W. D. Tyree	Mucker	
4/1/37	M. J. Gunn	Mucker	
4/1/37	G. W. Roig	Mucker	
4/1/37	Beldon Smith	Mucker	
4/1/37	C. L. Moore	Pipe helper	
4/1/37	W. D. Collins	Boilermaker helper	
4/1/37	A. L. Rambo	Electrician	
4/1/37	G. C. Veliz	Boilermaker	3/15/31
4/1/37	T. J. White	Pipefitter	6/13/22
4/1/37	T. E. Tallant	Mucker	3/17/31
4/6/37	H. W. Lynch	Mucker	
4/2/37	O. M. Clarke, Jr.	Mucker	
4/6/37	J. R. Bateman	Laborer	
4/6/37	W. A. Winchester	Watchman	
4/6/37	*J. W. Muldoon	Mucker	3/30/37
4/6/37	Lauro Avechuco	Laborer	11/26/28
4/5/37	F. J. Wojcik	Watchman	
4/5/37	C. P. Peters	Watchman	
4/2/37	Gilbert Gardner	Mucker	
4/2/37	J. A. Peacock	Mucker	
4/2/37	W. R. Collier	Mucker	
4/6/37	E. A. Fehring	Mucker	
4/6/37	J. W. Lynch	Miner	
4/2/37	R. M. Elston	Miner	
4/6/37	C. C. Coleman	Miner	
4/2/37	Merced Alcantar	Laborer	9/2/30
4/2/37	J. E. Grant	Truck driver	
4/6/37	J. W. Tenney	Miner	7/7/30
4/6/37	F. M. Knoll	Miner	8/6/31
4/6/37	E. J. Beauford	Miner	
4/2/37	A. B. Teran	Laborer	10/28/31
4/2/37	Narcisco Rodriquez	Laborer	10/28/31
4/6/37	J. F. Peralta	Laborer	1/31/35
4/7/37	L. B. Franks	Carpenter	
4/7/37	A. R. Negri	Blacksmith helper	6/2/27
4/7/37	Juan Rivera	Laborer	6/29/28
4/7/37	Francisco V. Sanchez	Laborer	3/9/31
4/7/37	Pablo Nevarez	Laborer	1/11/29
4/8/37	A. J. Ricketts	Mucker	
4/8/37	J. A. Joy	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
4/8/37	R. M. Collins	Boilermaker	6/24/30
4/9/37	J. E. McLain	Miner	
4/9/37	Vernon Roberts	Mucker	
4/9/37	E. M. Harris	Mucker	
4/9/37	A. G. Lewis	Miner	
4/9/37	A. M. Carrillo	Laborer	
4/12/37	Harold Eldridge	Miner	
4/12/37	Roscoe Parker	Painter	
4/12/37	F. T. Mount	Carpenter	
4/12/37	R. R. Buckridge	Mucker	
4/12/37	V. S. Barnett	Mucker	7/15/30
4/10/37	Victoriano Silva	Laborer	4/2/37
4/12/37	James Costello	Miner	
4/14/37	F. A. Thompson	Mucker	
4/15/37	G. L. Brown	Mucker	
4/15/37	H. W. Hardt	Mucker	
4/15/37	J. I. Taylor	Mucker	
4/15/37	D. O. Jarvis	Mucker	
4/15/37	J. C. Martineau	Mucker	
4/14/37	G. E. Johnson	Miner	
4/14/37	Bob Atkins	Miner	
4/15/37	W. E. Moore	Mucker	
4/15/37	P. J. Hunt	Mucker	
4/15/37	R. R. Wachs	Machinist	
4/13/37	August Juntenen	Miner	4/26/30
4/16/37	R. P. Anderson	Miner	
4/17/37	W. A. Brady	Mucker	
4/17/37	D. M. Kelly	Mucker	
4/17/37	N. G. Green	Miner	
4/17/37	Ira Hartman	Mucker	
4/17/37	T. E. Shackleford	Mucker	
4/17/37	R. A. Bowers	Mucker	
4/16/37	M. G. Fimbres	Laborer	
4/16/37	F. G. Shreves	Carpenter	
4/17/37	W. E. Little	Machinist	
4/15/37	J. C. Gonzales	Laborer	12/11/29
4/16/37	Mauricio Gil	Laborer	
4/16/37	J. M. Robles	Laborer	3/24/30
4/16/37	Jose DeLeon	Laborer	3/11/31
4/16/37	Cisto Salazar	Laborer	4/21/30
4/16/37	E. E. Martinez	Laborer	9/30/30
4/16/37	J. C. Moreno	Laborer	12/30/30
4/20/37	S. O. Tanner	Mucker	
4/20/37	D. F. Blair	Mucker	
4/20/37	W. R. Phillips	Mucker	
4/20/37	G. S. Kearns	Mucker	
4/20/37	C. W. Davis	Mucker	
4/20/37	R. A. Treece	Mucker	
4/20/37	H. E. Rohrer	Mucker	
4/20/37	C. B. Penn	Mucker	
4/21/37	*F. T. Baxter	Mucker	
4/23/37	A. F. Ham	Mucker	
4/23/37	W. C. Dippert	Mucker	
4/23/37	W. T. Brunson	Mucker	
4/23/37	*W. W. Taylor	Mucker	
4/23/37	T. W. Rice	Mucker	

Exhibit A, Attached to Stipulation.

Date hired	*Name*	*Occupation*	*If had previous service: Last day worked*
22/37	A. M. Janzan	Mucker	
23/37	A. J. Fowler	Mucker	
23/37	G. D. Smith	Mucker	
23/37	F. G. White	Mucker	
21/37	George Dunn	Mucker	
21/37	D. A. Page	Miner	
22/37	G. L. Burden	Mucker	
22/37	M. B. McLaughlin	Mucker	
22/37	J. N. Hall	Mucker	
22/37	Bartholomew Oliver	Mucker	
21/37	R. R. Teeples	Mucker	
22/37	A. C. Woods	Mucker	
22/37	Wilford Stokes	Mucker	
21/37	Martin Hernandez	Laborer	
21/37	Clifford Dean	Miner	4/30/30
21/37	B. F. Hall	Mucker	
23/37	W. W. Orton	Mucker	8/20/30
21/37	W. E. Lisonbee	Welder	11/20/28
27/37	C. P. Mansfield, Jr.	Mucker	
27/37	J. M. Bostick	Mucker	
27/37	R. L. Huntley	Mucker	
27/37	W. E. Warren	Mucker	
27/37	H. F. Williams	Mucker	
23/37	August Hillman	Laborer	
23/37	Blas Urbina	Laborer	
27/37	C. M. Suffield	Electrician	
23/37	A. S. Metzler	Laborer	
27/37	Robert Meier	Clerk	
23/37	Pedro Fabio	Laborer	7/5/29
23/37	Lasaro Burrola	Laborer	1/16/34
24/37	A. G. Romero	Laborer	
24/37	Melecio Robles	Laborer	3/6/29
23/37	*R. M. Haynes	Laborer	1/13/37
28/37	G. R. Jackson	Mucker	
28/37	Floyd Winchester	Mucker	
28/37	H. H. Chambers	Mucker	
28/37	Charlie McMenamy	Mucker	
28/37	J. M. Sanders	Mucker	
28/37	W. R. Beauford	Mucker	
27/37	H. E. Chase	Machinist	
30/37	D. J. McGinley	Mucker	
30/37	S. L. Wright, Jr.	Mucker	
29/37	J. M. Dodd	Mucker	
29/37	W. J. Abshier	Mucker	
24/37	J. W. Patterson	Janitor	
30/37	Carl Andrews	Miner	7/13/36
29/37	R. M. Adams	Mucker	8/8/27
30/37	Paul Mills	Miner	
23/37	*Doris E. Knowles	Nurse	
1/37	J. P. Smith	Miner	
1/37	K. N. Goodman	Mucker	
1/37	Gayle De Vilbiss	Mucker	
1/37	Robert Jones	Mucker	
1/37	W. A. Galloway	Mucker	
1/37	G. D. Peters	Miner	
1/37	A. D. Thomas	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
5/1/37	T. A. Brady	Tinsmith	
5/1/37	L. A. Colden	Electrician	
5/1/37	A. C. Yanez	Laborer	
5/1/37	R. H. Buckman	Miner	7/8/29
5/1/37	*Hugh Balke	Miner	4/3/36
5/1/37	L. A. Valenzano	Laborer	
5/4/37	R. S. Miller	Mucker	
5/4/37	J. M. West	Mucker	
5/4/37	W. B. Slaight	Mucker	
5/4/37	S. A. Mason	Miner	
5/4/37	A. L. Witt	Mucker	
5/4/37	C. L. Hicks	Mucker	
5/3/37	Andrew Morris	Carpenter	
5/4/37	M. H. Wood	Mucker	4/30/30
5/4/37	A. L. Cashell	Mucker	8/20/30
5/5/37	J. C. Foster	Mucker	
5/5/37	R. A. White	Mucker	
5/5/37	W. N. Meador	Mucker	
5/5/37	D. N. Holloway	Miner	
5/5/37	R. L. Smith	Mucker	
5/5/37	R. A. Sparks	Handyman	
5/5/37	*L. A. Aaron	Miner	6/29/36
5/5/37	*J. W. Wilson	Mucker	2/6/37
5/6/37	R. L. Gilliam	Mucker	
5/6/37	J. J. Phillips	Mucker	
5/6/37	J. M. Conery	Mucker	
5/6/37	A. D. Cox	Miner	
5/6/37	E. N. Mahana	Mucker	
5/6/37	T. A. Martin	Mucker	7/31/36
5/6/37	*J. L. McNeil	Miner	8/24/36
5/6/37	*R. G. Liebmann	Miner	3/29/37
5/7/37	W. H. Hooper	Mucker	
5/7/37	J. E. Jones	Miner	
5/8/37	J. D. Williams	Mucker	
5/8/37	W. E. Thompson	Miner	
5/7/37	W. L. Mayo	Mucker	
5/8/37	H. A. Saarick	Mucker	
5/7/37	C. E. Bertling	Mucker	
5/8/37	A. E. Hill	Mucker	
5/8/37	C. G. Hughes	Miner	
5/7/37	M. J. Brockman	Mucker	
5/8/37	P. E. Rustin	Mucker	
5/8/37	M. L. Renteria	Hotel maid	
5/8/37	Harvey Medley	Miner	4/26/30
5/7/37	W. J. Braman	Machinist	6/1/28
5/11/37	O. A. Mangum	Mucker	
5/11/37	A. N. Gafford	Mucker	
5/11/37	L. G. Rex	Mucker	
5/11/37	H. E. Dodson	Mucker	
5/11/37	F. L. Sullivan	Miner	
5/11/37	R. F. Sprague	Pipeman helper	
5/11/37	William Miller, Jr.	Miner	1/18/37
5/11/37	L. B. Johnson	Miner	4/26/30
5/10/37	*V. F. Wojcik	Clerk	1/16/37
5/12/37	W. J. Smith	Mucker	
5/12/37	O. M. Dennis, Jr.	Mucker	

Exhibit A, Attached to Stipulation.

Date hired	*Name*	*Occupation*	*If had previous service: Last day worked*
/12/37	T. R. Bozarth	Mucker	
/12/37	V. L. Cook	Mucker	
/12/37	J. F. Farnsworth	Mucker	
/12/37	T. P. Blevins	Boilermaker	
/12/37	*J. E. Mertaugh, Jr.	Mucker	2/16/37
/12/37	*E. H. Stoner	Miner	2/27/37
/12/37	*C. H. Salmons	Miner	2/1/37
/13/37	L. W. Lloyd	Mucker	
/13/37	I. G. Burns	Mucker	
/13/37	J. M. Tidmore	Mucker	
/13/37	T. L. Henson	Mucker	
/5/37	Eloise A. Giffen	Stenographer	
/13/37	A. O. Anderson	Mucker	
/13/37	*George Wilson	Miner	2/27/37
/13/37	Elmo Alexander	Mucker	10/13/30
/14/37	W. A. Miller	Mucker	
/14/37	R. E. Skates	Mucker	
/15/37	E. C. Tallant	Mucker	
/15/37	H. K. Tuschhoff	Mucker	
/14/37	Vernon Davis	Mucker	
/14/37	F. A. Jones	Mucker	
/14/37	R. A. McFarlane	Miner	
/15/37	W. H. McCahon	Miner	
/15/37	C. W. Craig	Mucker	
/15/37	P. M. Luna	Laborer	
/14/37	M. R. Smith	Mucker	
/15/37	R. E. Noriega	Laborer	10/29/31
/15/37	Aniceto Gonzales	Laborer	9/30/30
/1/37	Jose Vasquez	Laborer	2/6/28
/18/37	Edward Toffler	Mucker	
/18/37	L. W. Brown	Miner	
/18/37	C. M. Rhoads	Mucker	
/18/37	W. D. Tanner	Mucker	
/17/37	*C. W. Brown	Miner	
/17/37	*O. C. Stanbrough	Miner	1/4/37
/18/37	*F. E. Baumkirchner	Mucker	9/4/36
/19/37	A. A. Moss	Mucker	
/19/37	Carl Poole	Mucker	
/19/37	Thomas Brice	Mucker	
/19/37	E. H. Diffie	Mucker	
/19/37	J. H. Bricker, Jr.	Mucker	
/19/37	H. C. Boyles	Mucker	
/20/37	J. R. Costey	Mucker	
/20/37	S. C. McCahon	Miner	
/20/37	C. E. Younger	Mucker	
/20/37	L. J. O'Neill	Mucker	
/20/37	J. D. Akin	Mucker	
/20/37	C. W. Pruitt	Mucker	1/5/35
/20/37	*D. H. Spivey	Miner	1/31/37
/21/37	T. W. Brock	Mucker	
/20/37	F. R. Quill	Mucker	
/21/37	J. M. Bruce	Mucker	
/21/37	C. J. Beecroft	Mucker	
/21/37	R. E. Birdwell	Miner	
/21/37	B. G. Taff	Mucker	
/21/37	T. O. Luedtke	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
5/21/37	N. S. Kindle	Miner	
5/22/37	J. A. Jiminez	Laborer	
5/22/37	Jesus Felix	Laborer	
5/22/37	J. J. Feeney	Mucker	2/11/28
5/21/37	J. C. Jones	Mucker	11/27/29
5/22/37	G. M. Loya	Laborer	1/2/30
5/25/37	B. P. Ortez	Mucker	
5/25/37	C. B. Williams	Mucker	
5/25/37	J. E. Blackwell	Mucker	
5/25/37	J. H. Lacy, Jr.	Mucker	
5/25/37	Barnie Turner	Mucker	
5/26/37	C. W. Large	Mucker	
5/26/37	*G. G. Gilman	Mucker	8/21/36
5/26/37	*W. J. Knox	Miner	9/5/36
5/26/37	*J. A. Lemon	Mucker	10/22/36
5/26/37	*L. C. Clark	Mucker	8/14/36
5/26/37	*C. K. Schmidt	Miner	6/30/36
5/27/37	O. L. Tallant	Mucker	
5/27/37	E. W. Hutchens	Mucker	
5/27/37	L. H. Tenney	Mucker	
5/27/37	W. E. Lawson	Mucker	
5/27/37	Delma Fikes	Mucker	
5/27/37	G. O. Younger	Mucker	
5/26/37	*A. B. Teran	Laborer	5/17/37
5/27/37	*R. C. James	Mucker	8/31/36
5/27/37	B. R. Jones	Mucker	
5/27/37	Pete Fenn	Miner	4/22/26
5/28/37	D. A. Herrington	Mucker	
5/28/37	J. J. Ryan	Mucker	
5/28/37	W. J. Hunt	Mucker	
5/28/37	Ralph Wood	Mucker	
5/28/37	H. D. Mauldin	Mucker	
5/28/37	W. C. Slover	Mucker	
5/28/37	*J. H. Bendixen	Miner	9/5/36
5/28/37	A. E. Lightfoot	Mucker	
5/29/37	D. C. Root	Mucker	
5/29/37	J. M. Modesett	Mucker	
5/29/37	C. E. Taylor	Mucker	7/29/29
5/29/37	Earl Dye	Miner	
5/29/37	P. R. Abril	Laborer	3/21/28
5/29/37	A. R. Villa	Laborer	
5/10/37	Susan Boyle	Nurse	
5/31/37	B. M. Sproule	Mining engineer	
5/1/37	*Margery Jordan	Nurse	
5/5/37	*Nine Barr	Nurse	
5/31/37	*Chloen J. Smith	Hotel maid	
5/26/37	A. J. Breslin	Hospital orderly	
6/1/37	Corwin Jacobs	Miner	
6/1/37	F. C. Pickard	Mucker	
6/1/37	C. J. Miller	Miner	
6/1/37	P. G. Prather	Miner	10/15/30
6/1/37	*C. W. Weathers	Mucker	2/25/37
6/1/37	J. W. Dye	Mucker	1/13/37
6/1/37	*J. E. Werner	Mucker	3/12/37
6/1/37	C. E. Lanphere	Miner	2/5/35
6/1/37	*W. A. Andrews	Mucker	10/31/36

Exhibit A, Attached to Stipulation.

Name	*Occupation*	*If had previous service: Last day worked*
W. M. Holmberg	Mucker	
W. T. Harris	Mucker	
C. C. Qualls	Mucker	
K. B. Howell	Mucker	
C. F. Mechler	Miner	
S. A. Rubcic	Mucker	9/4/36
*W. G. Smith	Mucker	8/20/36
M. N. Besich	Mucker	
L. J. Bell	Miner	
J. C. Williamson	Mucker	
R. F. Conway	Mucker	
C. E. Ladd	Welder	
D. J. Harwood	Clerk	
D. M. Rayless	Hospital technician	
*M. O. Evans	Mucker	11/30/36
J. A. Kuney	Miner	
A. E. Rickard	Mucker	
F. L. Shreves	Mucker	
Mack Pultz	Mucker	
J. W. Tidwell	Mucker	
W. G. Clark	Mucker	
A. V. Garcia	Laborer	
W. H. R. Webb	Laborer	
F. R. Burgess	Laborer	
F. L. Barcelo	Laborer	
W. P. Marinez	Laborer	
*W. T. Bendixen	Miner	8/30/35
*C. E. Jarnigan	Miner	12/1/36
*R. F. Hilburn	Miner	9/9/36
C. W. Loyd	Miner	
E. J. Jacobson	Mucker	
M. R. Abril, Jr.	Laborer	10/29/31
J. H. Stewart	Mucker	
E. M. Baumkirchner	Mucker	
R. L. Boat	Mucker	
*G. D. Allen	Mucker	9/4/36
*R. R. Schmid	Mucker	9/4/36
J. C. Andreas	Mucker	9/14/36
*B. R. Adams	Mucker	9/10/36
*D. F. Vonk	Dispensary clerk	
E. W. Harris	Mucker	
E. F. Cox	Mucker	
P. L. Pavlovich	Mucker	
E. J. Caldwell	Mucker	
R. M. House	Mucker	
J. H. Schissler, Jr.	Mucker	
C. C. Cameron	Mucker	
J. E. Petsche	Oiler	
Frank Dornik	Boilermaker apprentice	
*J. E. Pickering	Mucker	9/5/36
C. A. Cosgrove	Miner	9/11/36
T. W. McSpadden	Mucker	1/25/37
*T. W. McGarry	Miner	9/5/36
D. E. Naegle	Miner	
*M. A. Boss	Mucker	9/5/36
Frank Borgatta	Laborer	4/24/29

Exhibit A, Attached to Stipulation.

Date Hired	Name	Occupation	If had previous service: Last day worked
6/11/37	G. H. Crist	Mucker	
6/11/37	A. Q. Nations	Mucker	
6/11/37	J. O. Nigra	Mucker	
6/11/37	*M. J. Dodge	Mucker	9/5/36
6/11/37	R. H. D'Albini	Mucker	8/22/36
6/11/37	Peter Kerwin	Miner	6/4/31
6/12/37	E. L. Keeth	Mucker	
6/12/37	R. E. Chevalier	Mucker	
6/12/37	F. A. Daubin, Jr.	Mucker	
6/12/37	H. W. Long	Miner	
6/12/37	W. L. Rickard	Mucker	
6/12/37	K. N. Cupp	Mucker	
6/12/37	J. R. Bowen	Mucker	
6/12/37	E. G. Lopez	Laborer	
6/12/37	*J. W. Cameron	Mucker	10/12/35
6/12/37	C. E. Thur	Miner	2/29/36
6/15/37	L. O. Dahlgren	Mucker	
6/14/37	*M. N. Besich	Mucker	6/12/37
6/16/37	J. W. Small	Mucker	
6/16/37	C. D. Davis	Machinist	
6/16/37	*J. B. McPherson	Mucker	1/4/37
6/16/37	*G. A. Rylance	Mucker	9/4/36
6/16/37	J. E. Holt	Mucker	4/9/30
6/16/37	*L. M. Berry	Mucker	5/31/37
6/21/37	A. F. Kristovich	Mucker	
6/22/37	D. G. McNeil	Mucker	
6/22/37	J. H. Macia	Mucker	
6/22/37	J. C. Sessions	Mucker	
6/22/37	C. C. Starbuck	Mucker	
6/22/37	H. J. Reed	Mucker	
6/22/37	E. J. King	Mucker	
6/22/37	J. E. Gannon	Machinist helper	
6/22/37	H. L. Henrie	Machinist helper	
6/5/37	Margaret E. Connelly	Nurse	
6/22/37	*L. M. Hall	Miner	6/10/37
6/22/37	*O. D. Haynie	Miner	6/2/37
6/21/37	*C. H. Johnston	Miner	6/15/37
6/22/37	H. C. Ambrose	Mucker	
6/21/37	*K. E. Estes	Mucker	4/4/37
6/21/37	H. G. Davis	Miner	6/10/35
6/23/37	R. S. Long	Miner	
6/23/37	H. H. Voelker	Miner	
6/22/37	Edward Conley	Miner	
6/23/37	C. G. Foreman	Mucker	
6/23/37	B. R. Jerman, Jr.	Mucker	
6/23/37	A. P. Bendixen	Finlay operator	10/30/36
6/22/37	*Gordon Hodges	Miner	3/30/37
6/22/37	Irvine MacDougall	Oiler	8/18/35
6/24/37	B. H. Barnette	Mucker	
6/24/37	I. G. Patrick	Mucker	
6/24/37	*R. C. Wood	Miner	6/17/37
6/23/37	*J. H. Henderson	Miner	4/27/37
6/24/37	O. D. Winkle	Mucker	12/31/28
6/24/37	F. W. Howell	Miner	4/21/30
6/24/37	U. T. Link	Miner	2/16/37
6/24/37	*L. S. Armstrong	Miner	4/17/37

Exhibit A, Attached to Stipulation.

Date hired	Name	Occupation	If had previous service: Last day worked
24/37	O. D. Chase	Mucker	
24/37	C. H. Maak	Mucker	
24/37	R. K. Beeth	Mucker	
24/37	C. M. Larsen	Mucker	
25/37	J. H. Townsend	Mucker	
25/37	J. B. Glenn, Jr.	Mucker	
25/37	B. H. Belluzzi	Mucker	
25/37	O. F. Satterfield	Mucker	
26/37	Charles Rapp, Jr.	Mucker	
26/37	N. E. Harris	Machinist helper	
26/37	*E. C. Lytle	Miner	3/8/37
28/37	*J. A. Morrow	Miner	4/12/37
14/37	*J. A. Hill	Mucker	9/7/36
29/37	Robert Long	Mucker	
29/37	F. S. Knight	Mucker	
29/37	M. R. Dungan	Mucker	
29/37	J. C. Nidiffer	Miner	
29/37	R. G. Charlton	Mucker	
29/37	C. L. Tate	Miner	9/14/27
29/37	*Andrew Angle	Miner	4/21/37
29/37	G. W. Coggin	Miner	1/30/32
29/37	D. E. Flanery	Miner	7/18/30
6/37	A. B. McClure	Porter	11/7/36
30/37	Edward Burke	Hospital orderly	
1/37	*E. B. Wiley	Nurse	
2/37	A. A. Torres	Laborer	
1/37	*W. E. Haygood	Mucker	5/31/37
8/37	* G. R. Sinclair	Mucker	9/10/36
2/37	R. G. Kelly	Boilermaker helper	8/21/36
7/37	Jefferson Oglesby	Miner	
7/37	Carlo E. Mazzoni	Mucker	
7/37	F. D. Long	Oiler	
7/37	*C. W. Loyd	Miner	6/23/37
7/37	H. J. Hart, Jr.	Mucker	8/31/36
7/37	*T. H. Voelker	Mucker	10/5/36
7/37	A. O. Orton	Mucker	7/24/30
7/37	Jack A. Wilson	Mucker	
7/37	Basil Hobgood	Mucker	7/15/36
7/37	Jack Howard	Miner	9/2/30
8/37	R. R. Pierce	Mucker	
7/37	Betty L. Kobey	Stenographer	
8/37	J. F. Barnes	Miner	4/30/30
8/37	D. K. Pence	Mucker	
8/37	*D. F. Vonk	Mucker	6/18/37
8/37	*G. A. F. Deshler	Mucker	9/15/36
9/37	M. W. Byfield	Miner	
9/37	L. J. Byfield	Miner	
9/37	B. L. Olson	Mucker	
10/37	Francisco Valenzuela	Laborer	
10/37	P. A. Gomez	Laborer	
10/37	J. S. Castillo	Laborer	
10/37	M. Z. Jaramillo	Laborer	
10/37	Gilbert Mendoza	Laborer	
9/37	J. A. Roberts	Miner	3/20/29
10/37	Luis Sepulveda	Laborer	7/31/28
13/37	G. C. Frazier	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
7/13/37	Jack Brown	Miner	
7/13/37	C. E. Roberts	Miner	12/14/31
7/13/37	*G. A. Looman	Miner	3/30/37
7/13/37	W. T. Hanson	Mucker	
7/13/37	*E. F. Carnes, Jr.	Blacksmith helper	
7/14/37	E. H. Walker	Mucker	
7/14/37	M. G. Bloosevitch	Miner	
7/14/37	A. M. Cisneros	Laborer	
7/14/37	F. M. Reyes	Laborer	
7/14/37	C. A. Cota	Laborer	
7/9/37	T. L. Hall (Miss)	Stenographer	
7/20/37	A. H. Staniger	Miner	
7/29/37	K. L. Longan	Miner	
7/29/37	J. V. Beets	Mucker	
7/20/37	*J. S. Dymock, Jr.	Blacksmith helper	7/25/36
7/20/37	W. C. Merrill	Electrician helper	9/12/35
7/20/37	*J. C. Rogers	Electrician helper	9/12/36
7/20/37	*W. P. Sertic	Clerk	1/4/37
7/22/37	J. J. Raymond	Miner	
7/22/37	K. E. Grimm	Mucker	
7/22/37	*P. F. Keeler	Miner	
7/22/37	J. H. Clark	Mucker	
7/21/37	Henry Hansen	Car repairman	8/20/31
7/22/37	John Flores	Laborer	
7/22/37	*D. L. Jarvis	Miner	7/13/37
7/22/37	*R. E. Martyr	Miner	5/20/37
7/22/37	W. L. Moore	Miner	
7/22/37	Herman Conrow, Jr.	Miner	
7/22/37	C. T. Wootf	Painter	
7/22/37	*C. W. Weathers	Miner	7/12/37
7/23/37	M. I. Connors	Miner	2/4/28
7/24/37	A. R. Martinez	Laborer	
7/24/37	*R. E. Whitlow	Miner	3/1/37
7/24/37	F. A. Baugh	Mucker	
7/26/37	Diego B. Corral	Laborer	
7/14/37	Tokie Hudson	Nurse	
7/2/37	Chester Brooks	Mucker	
8/2/37	R. O. Figueroa	Laborer	
8/2/37	D. A. Quijada	Laborer	
8/2/37	T. R. Ohton	Laborer	
8/3/37	A. R. Tonsi	Mucker	
8/3/37	D. D. Burnett	Mucker	
8/3/37	*L. E. Higgins	Miner	
8/3/37	S. S. Williams	Mucker	
8/3/37	M. E. E. Lane	Miner	
8/3/37	*W. L. Sholly	Miner	10/12/36
8/3/37	*Ray Coomer	Miner	1/4/37
8/3/37	*H. T. Coons	Mucker	10/12/36
8/5/37	Earl Van Treese	Miner	
8/5/37	T. J. Riggs	Mucker	
8/5/37	J. T. Verant	Miner	
8/5/37	C. T. Bostick	Mucker	
8/5/37	Timothy Monahan	Miner	
8/5/37	W. J. Evans	Miner	
8/5/37	*Howard Dennison	Mucker	5/26/37
8/5/37	H. H. Davis	Miner	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
8/5/37	*M. W. Bouldin	Miner	1/19/37
8/5/37	H. E. Boice	Mucker	
8/7/37	Alexander Balich	Mucker	
8/7/37	C. E. Eldridge	Mucker	
8/7/37	P. W. Hanning	Miner	
8/7/37	T. O. Inus	Mucker	
8/7/37	W. L. Dean	Miner	7/17/30
8/7/37	W. C. L. Holloway	Miner	
8/7/37	T. S. Dugie	Miner	10/27/31
8/7/37	*I. H. Miller	Mucker	
8/7/37	J. B. Williams	Chemist	8/1/35
8/9/37	H. D. Lee	Miner	
8/9/37	J. W. Johnston	Mucker	
8/9/37	O. B. Eitel	Mucker	
8/9/37	H. W. Oliver	Mucker	
8/9/37	T. O. Gibbs	Miner	
8/9/37	B. E. Kajohn	Mucker	
8/9/37	*Ike Gorman	Mucker	5/18/37
8/11/37	A. T. Holmberg	Miner	
8/11/37	K. E. Wilson	Miner	
8/11/37	Pickett Hinton	Mucker	
8/11/37	D. G. Ducich	Miner	
8/11/37	M. J. Davis	Miner	
8/11/37	C. W. Moore	Mucker	
8/11/37	O. M. Farnsworth	Mucker	
8/11/37	W. T. Hastie	Mucker	9/6/35
8/11/37	Jack Hill	Miner	
8/14/37	J. A. Windham	Mucker	5/5/37
8/14/37	B. F. Davenport	Mucker	
8/14/37	Van Lang	Mucker	
8/14/37	C. R. Riggs	Mucker	
8/14/37	W. E. Miller	Mucker	
8/14/37	J. D. McIntosh	Mucker	
8/14/37	A. E. Farnsworth	Mucker	
8/14/37	R. G. Macgregor	Mucker	
8/14/37	G. T. Kartchner	Mucker	
8/17/37	C. J. D. Carroll	Mucker	
8/17/37	J. W. Akin	Mucker	
8/17/37	R. R. Langley	Mucker	
8/17/37	M. H. Funderburgh	Mucker	
8/17/37	G. E. Haynie	Mucker	
8/17/37	M. T. Anderson	Mucker	
8/17/37	R. E. Pace	Miner	8/2/37
8/17/37	*Robert Jackson	Mucker	7/31/37
8/17/37	*C. T. Moore	Mucker	5/20/37
8/17/37	Russell Pyeatt	Mucker	
8/19/37	D. M. Spilsbury	Mucker	
8/19/37	J. A. Peccolo	Mucker	
8/18/37	O. C. McMenamy	Mucker	
8/19/37	Paul Watkins	Mucker	
8/19/37	*J. R. Hall	Miner	6/30/37
8/19/37	Jodie Mayberry	Miner	5/11/32
8/19/37	*R. M. Cotten	Mucker	6/24/37
8/19/37	M. W. Ashby	Miner	7/6/27
8/21/37	F. E. Dodd	Mucker	
8/21/37	F. M. Johnson	Mucker	

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous ser Last day worked*
8/21/37	A. O. Menges	Mucker	
8/21/37	M. S. Ross	Mucker	
8/21/37	M. L. Brown	Mucker	
8/21/37	S. E. Gonzales	Laborer	
8/21/37	J. A. Acuna	Laborer	
8/24/37	Amos West, Jr.	Mucker	
8/24/37	C. W. Dean	Mucker	
8/24/37	L. K. Farnsworth	Mucker	
8/24/37	C. H. Ater	Mucker	
8/24/37	G. E. Dickey	Miner	
8/24/37	L. D. Hickman	Mucker	
8/24/37	J. S. Rescorla	Mucker	
8/24/37	Aristeo de Leon, Jr.	Laborer	
8/24/37	Roy Lynch	Miner	8/3/37
8/24/37	H. C. Davis	Mucker	
8/24/37	J. R. Gafford	Mucker	
8/25/37	*S. A. Mason	Miner	8/13/37
8/25/37	*R. C. Herrell	Miner	7/31/36
8/30/37	B. A. Davis	Mucker	
8/30/37	C. M. Thomas	Mucker	
8/30/37	Jesse Hill	Mucker	
8/30/37	M. E. Williamson	Miner	
8/30/37	Tom Riggs	Mucker	
8/30/37	R. R. Howell	Mucker	
8/30/37	E. R. Bowman	Mucker	
8/30/37	R. C. Haby	Mucker	
8/30/37	G. R. Rescorla	Mucker	
8/14/37	Mrs. J. R. Higdon	Cook	
8/16/37	*Rosilla Hill	Nurse	
8/16/37	*Tokie Hudson	Nurse	
8/24/37	*Nina Barr	Nurse	
8/27/37	*Chloen Smith	Hotel maid	
8/31/37	*Susan Boyle	Nurse	
8/12/37	Jewell Lee	Nurse	
9/2/37	E. V. Russell	Mucker	
9/2/37	G. E. Whitehead	Mucker	
9/2/37	S. R. Jeffers	Mucker	
9/2/37	A. P. Baugh	Mucker	
9/2/37	K. C. Emory	Mucker	
9/2/37	D. I. Gartin	Mucker	
9/2/37	W. H. Davis	Mucker	
9/2/37	M. A. McClendon	Mucker	
9/2/37	M. B. Judd	Mucker	
9/2/37	L. L. Barker	Mucker	6/19/36
9/2/37	*T. L. Kinney	Mucker	5/18/37
9/3/37	*Pearl L. Wilcox	Librarian	
9/9/37	*W. B. Anderson	Mucker	
9/9/37	T. I. Coffman	Mucker	
9/9/37	B. F. Rex	Mucker	
9/9/37	S. W. Davis	Mucker	
9/9/37	G. E. Copeland	Mucker	
9/9/37	L. C. McKnight	Miner	
9/9/37	A. C. Moore	Mucker	
9/9/37	Edward Dupnik	Mucker	
9/9/37	W. B. Gingerich	Miner	
9/9/37	H. C. Goodman	Mucker	7/26/38

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service: Last day worked*
9/3/37	J. P. Henry	Watchman	
9/11/37	Tommie Hodges	Mucker	
9/11/37	W. H. Kizer	Mucker	
9/11/37	R. H. Cook	Mucker	
9/11/37	E. R. Cladwell	Miner	
9/11/37	Lloyd Winchester	Mucker	
9/11/37	W. E. White	Mucker	
9/11/37	B. J. Lemke	Mucker	
9/11/37	L. L. McDoniel	Mucker	
9/11/37	Harry Marks	Electrician helper	
9/11/37	G. R. Hurtado	Laborer	
9/11/37	*G. E. Taylor	Miner	8/24/37
9/11/37	T. E. Schackleford	Mucker	8/18/37
9/14/37	J. C. Harkins	Mucker	
9/14/37	J. M. Graves	Mucker	
9/14/37	C. M. Peterson	Mucker	
9/14/37	C. L. Davis	Mucker	
9/14/37	A. L. Carrigan	Mucker	
9/14/37	L. I. Gatlin	Mucker	
9/14/37	J. H. Hudson	Mucker	
9/14/37	P. M. Bartlett	Mucker	
9/14/37	M. S. Best	Mucker	
9/14/37	Cleofas Dugie	Miner	
9/16/37	R. E. Benton	Mucker	
9/16/37	L. H. Luker	Mucker	
9/16/37	Z. B. Newsome	Mucker	
9/16/37	O. T. Pfefferkorn	Mucker	
9/16/37	Findlay J. Postles	Mucker	
9/16/37	George Barringer	Mucker	
9/16/37	J. H. Tate	Mucker	
9/16/37	E. T. Moore	Mucker	
9/16/37	C. H. Irwin	Miner	
9/13/37	G. E. Keating (Miss)	Stenographer	
9/16/37	R. L. Noble	Mucker	8/31/37
9/16/37	*Milton Carlisle	Mucker	11/27/36
9/18/37	C. A. Wittig	Mucker	
9/18/37	H. B. Siria	Mucker	
9/17/37	H. G. Hardt	Mucker	
9/18/37	H. T. Puckett	Mucker	
9/18/37	H. L. Lott	Mucker	
9/18/37	James Doyle	Mucker	
9/18/37	A. T. Perotti	Mucker	
9/18/37	F. F. Carbajal	Laborer	
9/18/37	R. A. Arquelles	Laborer	
9/2/37	Clara Deskins	Maid	
9/18/37	*J. D. Pierce	Mucker	6/19/37
9/21/37	V. T. Young	Mucker	
9/21/37	C. E. Whittle	Mucker	
9/21/37	H. H. Grenwelge	Mucker	
9/21/37	J. S. Vick	Mucker	
9/21/37	W. R. DeFord	Mucker	
9/21/37	Roy Skarl	Mucker	
9/21/37	E. A. White	Mucker	
9/21/37	L. W. Preston	Mucker	
9/21/37	*J. D. Hodges	Miner	8/31/37
9/18/37	J. A. McClure	Boiler maker	10/15/36

Exhibit A, Attached to Stipulation.

Date Hired	*Name*	*Occupation*	*If had previous service Last day worked*
9/15/37	Wiley Stephens	Orderly	
9/23/37	C. A. Raab	Miner	
9/27/37	*R. F. Sprague	Pipeman helper	9/23/37
9/27/37	L. E. Wohler (Miss)	Maid	
9/17/37	G. B. Hayes	Maid	
9/27/37	F. L. Hedrick	Janitor	
9/2/37	*Margaret Connelly	Nurse	
9/2/37	*Margery Jordan	Nurse	
9/23/37	*Susan C. Boyle	Nurse	
10/7/37	Marion Turley	Mucker	
10/7/37	F. C. Bingham	Mucker	
10/7/37	E. D. Wheeler	Mucker	
10/7/37	Elmer Smith	Mucker	
10/7/37	I. R. Luker	Mucker	
10/7/37	*E. P. Mendoza	Laborer	9/8/37
10/7/37	*B. E. Armstrong	Mucker	6/30/37
10/6/37	*Thelma Hall	Stenographer	9/25/37
10/7/37	M. L. Ryan	Mucker	
10/7/37	B. B. Gambill	Electrician	
10/1/37	Dr. A. L. Henrichsen	Physician	
10/18/37	H. F. Stanton	Physician	
10/22/37	*A. J. Ricketts	Mucker	10/21/37
10/23/37	May E. Morrison	Stenographer	
10/29/37	*Kenneth Crowder	Miner	9/30/37
10/29/37	Harry Murphy	Orderly	
10/29/37	D. H. Hickok	Mining engineer	
10/29/37	Ernest Bright	Orderly	9/17/37
10/29/37	*Margery Jordan	Nurse	
10/31/37	*Floyd Winchester	Mucker	10/29/37
10/31/37	*F. J. Miller	Miner	10/29/37
10/31/37	*W. L. Dean	Miner	10/29/37
11/4/37	H. J. D. Hambrick	Miner	
11/4/37	*K. E. Grimm	Mucker	10/29/37
11/1/37	*Barnie Turner	Mucker	10/29/37
11/1/37	*J. E. Jones	Miner	10/31/37
11/8/37	*O. D. Winkle	Mucker	10/31/37
11/8/37	R. W. Mardon	Orderly	
11/10/37	*F. W. Howell	Miner	10/31/37
11/15/37	*R. M. House	Mucker	10/31/37
11/15/37	Olof Wade	Mucker	10/29/37
11/15/37	*Harvey Medley	Miner	10/31/37
11/15/37	*E. W. Kelly	Mucker	10/30/37
11/15/37	*Melvin Ross	Mucker	10/31/37
11/16/37	Gurney Dunham	Mucker	10/31/37
11/17/37	*J. C. Martineau	Mucker	10/31/37
11/1/37	*J. W. Tidwell	Mucker	10/30/37
11/18/37	J. R. Higdon	Pipeman helper	10/25/37
11/22/37	*M. L. Ryan	Mucker	10/31/37
11/22/37	*H. M. Bailey	Mucker	10/31/37
11/24/37	*V. D. Collum	Miner	11/1/37
12/14/37	*C. A. Saunders	Motorman	12/10/37
12/15/37	*T. L. Herrington	Mucker	12/11/37
12/21/37	*P. C. Llanez, Jr.	Laborer	10/20/37
12/28/37	*Susan C. Boyle	Nurse	
12/16/37	M. A. Bateman	Employment Agent	8/5/37
12/25/37	Edna Murphy	Nurse	

Exhibit A, Attached to Stipulation.

Date hired	*Name*	*Occupation*	*If had previous service: Last day worked*
/30/37	*G. T. Modesette	Miner	12/29/37
/30/37	*H. R. Fryke	Miner	12/30/37
/31/37	*H. M. June	Mucker	12/30/37
/1/38	*P. R. Brown	Mucker	12/31/37
/3/38	*J. H. Jett	Mucker	12/21/37
/3/38	*Gilberto Chavez	Laborer	12/31/37
/6/38	*J. D. Gilman	Mucker	12/30/37
/8/38	*J. H. Hatton	Mining engineer	5/25/37
/10/38	Edward Johnson	Mucker	12/31/37
/10/38	*A. C. Melton	Miner	12/30/37
/10/38	*T. J. White	Pipefitter	1/5/38
/11/38	Florence Camiano	Stenographer	7/31/37
/12/38	*Lonnie Cloud	Miner	12/21/37
/8/38	*W. C. Hobgood	Mucker	12/31/37
/3/38	*D. H. Holt	Miner	12/31/37
/16/38	Loren R. Peterson	Hotel manager	8/28/30
/24/38	R. P. Pettijohn	Motorman	12/31/37
/4/38	*Hilda Andrews	Nurse	
/23/38	*Margery Jordan	Nurse	

Total number hired..... 2249

*Appears before each name which has been listed more than once.

Exhibit B.

PHELPS DODGE CORPORATION
Copper Queen Branch, Mines Division

Employees Who Quit or Were Laid Off From August 9, 1935 To January 27, 1938, Inclusive

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
8/11/35	F. R. Williams	6/6/19	Miner
8/11/35	R. Y. Garcia	4/25/29	Miner
8/14/35	C. L. Greenwall	6/11/35	Tool Nipper
8/15/35	Ralph Wilson	6/4/34	Mucker
8/9/35	P. J. Cresto	8/2/35	D. D. Helper
8/10/35	William Clemo	9/8/32	Miner
8/12/35	J. J. Higgins	6/23/31	Miner
8/12/35	Henry Costley, Sr.	4/1/14	Motorman
8/13/35	W. B. McLendon	4/25/34	Miner
8/13/35	John Dornik, Jr.	1/15/34	Mucker
8/15/35	Alex Kidd	6/10/35	Watchman
8/15/35	H. L. Fenner	6/10/35	Watchman
8/15/35	E. W. Ranes	6/10/35	Watchman
8/15/35	W. T. Hunter	6/10/35	Watchman
8/15/35	Aaron Kennaugh	6/10/35	Watchman
8/15/35	Pat Beecher	6/10/35	Watchman
8/15/35	W. S. Stodghill	6/10/35	Watchman
8/15/35	Max Wollman	6/10/35	Watchman
8/15/35	Henry Warmington	6/10/35	Watchman
8/15/35	Charles Tschirhart	6/10/35	Watchman
8/15/35	P. J. Kirkland	6/10/35	Watchman
8/15/35	Humphrey Joughin	6/10/35	Watchman
8/15/35	J. J. Jeffery	6/10/35	Watchman
8/15/35	Richard Copeland	6/10/35	Watchman
8/15/35	Charles Wilson	6/10/35	Watchman
8/15/35	J. H. Perry	6/15/35	Watchman
8/15/35	Walter Knowles	6/15/35	Watchman
8/15/35	Albert Erickson	6/15/35	Watchman
8/15/35	J. B. Frank	6/15/35	Watchman
8/15/35	William Werner	6/15/35	Watchman
8/15/35	R. T. Maddern	6/15/35	Watchman
8/15/35	Bob Hargis	6/27/35	Watchman
8/15/35	William Taylor	7/8/35	Watchman
8/15/35	Pearl Wilcox	8/1/35	Librarian
8/26/35	Bostick Williams	6/17/35	Pharmacist
8/26/35	J. F. Hambrick	6/10/35	Miner
8/19/35	W. M. Ratterree	6/10/35	Mucker
8/31/35	E. F. Insley	6/24/35	Mucker
8/23/35	Harrell Hammersley	7/5/35	Mucker
8/31/35	K. E. Estes	7/2/35	Mucker
8/31/35	G. G. Gilman	6/25/35	Mucker
8/30/35	T. C. Conroy	7/25/35	Mucker
8/20/35	Myles Stephenson	6/10/35	Miner
8/16/35	R. F. Hilburn	6/13/35	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
8/30/35	R. E. Martyr	6/13/35	Mucker
8/21/35	Douglas Strawn	5/1/34	Miner
8/30/35	John Bendixen	6/19/35	Mucker
8/16/35	J. C. Tuell	6/24/35	Mucker
8/30/35	Tom McGarry	5/31/35	Mucker
8/16/35	Ernest MacDougall	6/24/35	B. M. Helper
8/30/35	Ralph Brachard	7/11/35	Miner
8/24/35	M. E. Cosgrove	2/24/34	Hos. Orderly
8/30/35	A. T. Hoy	6/3/35	Elect. Helper
8/18/35	Irvine MacDougall	6/24/35	Elect. Helper
8/21/35	Dan Scurlock	11/1/31	Miner
8/22/35	T. S. Dornik	11/9/29	Motor Swamper
8/21/35	F. W. Cornett	10/25/27	Motor Swamper
8/21/35	Sam King, Jr.	8/25/33	Miner
8/31/35	Virgil Nading	12/26/33	Miner
8/21/35	F. H. Hoffman	10/10/28	Miner
8/21/35	E. E. Adams	12/15/30	Miner
8/24/35	Joe Kridel	8/27/34	Miner
8/21/35	Sime Spivey	6/11/34	Mucker
8/24/35	J. F. Johnson	4/2/16	Trackman
8/26/35	C. L. Hansen	4/20/34	Miner
8/27/35	P. R. Schumacher	1/7/32	Miner
8/24/35	G. D. Warsing	11/18/30	Miner
9/3/35	T. C. Hargis	6/3/35	Mucker
9/6/35	W. T. Hastie	2/12/35	Mucker
9/6/35	J. S. Dymock, Jr.	6/10/35	Mucker
9/15/35	Si Cornett	4/1/29	Miner
9/3/35	M. A. Boss	6/26/35	Mucker
9/12/35	T. E. Colford, Jr.	6/26/35	Mucker
9/11/35	W. J. Knox	6/10/35	Miner
9/12/35	E. B. Brooks	6/10/35	Miner
9/15/35	James Graham	12/26/33	Miner
9/15/35	S. J. M. Penberthy	8/9/22	Miner
9/15/35	G. A. Looman	4/1/35	Mucker
9/6/35	Keller Hogan, Jr.	7/10/35	Mucker
9/3/35	Kenneth W. Wells	6/25/35	Mucker
9/6/35	J. P. Monaghan	1/1/27	Cager
9/15/35	J. T. Dunbar	7/1/35	Mucker
9/13/35	A. J. Garnier	9/12/33	Miner
9/3/35	W. C. Adams	6/10/35	Mucker
9/9/35	W. R. Scott	7/1/35	Mucker
9/11/35	G. R. Sinclair	6/10/35	Mucker
9/1/35	G. E. Copeland	7/1/35	Mucker
9/9/35	A. E. Wohlschlegel	6/18/35	Mucker
9/4/35	C. E. Haynes	5/30/34	Welder
9/12/35	H. R. Fisher	6/10/35	B. M. Helper
9/9/35	D. F. Vonk	7/1/33	Hosp. Janitor
9/15/35	Lem Stallings	6/10/35	Watchman
9/15/35	L. H. Moon	6/10/35	Watchman
9/15/35	J. G. Bendixen	6/10/35	Watchman
9/15/35	John Flynn	6/10/35	Watchman
9/15/35	J. H. Atkinson	6/10/35	Watchman
9/15/35	F. E. Barnes	6/10/35	Watchman
9/15/35	B. T. Watkins	6/10/35	Watchman

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
9/15/35	F. M. Beam	6/10/35	Watchman
9/15/35	E. A. Watkins	6/10/35	Watchman
9/15/35	Harry Brown	6/10/35	Watchman
9/15/35	F. E. Smith	6/10/35	Watchman
9/15/35	G. M. Carlisle	6/10/35	Watchman
9/15/35	F. J. Wasser, Sr.	6/15/35	Watchman
9/15/35	Frank Bonham	6/15/35	Watchman
9/15/35	Albert Erickson	7/8/35	Watchman
9/15/35	E. J. Ikler	6/15/35	Watchman
9/15/35	B. J. Humphrey	6/27/35	Watchman
9/15/35	William Shields	6/27/35	Watchman
9/15/35	Tom Hargis	6/27/35	Watchman
9/15/35	Bob Kinchole	7/10/35	Watchman
9/15/35	W. J. Hunter	6/10/35	Watchman
9/12/35	W. F. Gregory	9/19/28	Miner
9/25/35	Frank Carbajal	6/26/35	Mucker
9/18/35	L. J. Morin	7/31/35	Carp. Helper
9/21/35	C. E. McKelvey	9/5/33	Miner
9/12/35	W. J. Peart	1/29/24	Miner
9/20/35	Dr. W. S. Kitt	8/19/35	Physician
9/20/35	Tom Yelland	8/1/23	Miner
10/3/35	Cleburn Adams	1/15/34	Mucker
10/3/35	Elmer Gardner	11/24/28	Mucker
10/3/35	Ernest White	5/20/35	Miner
10/10/35	R. L. Dublin	7/15/35	Mucker
9/4/35	D. D. W. Davis	6/20/35	Mucker
10/1/35	L. L. Davis	10/1/35	Shaftman
8/29/35	Edward Woods	10/28/29	Miner
8/17/35	E. J. Pyle	3/5/29	Miner
10/1/35	W. M. Frazier	1/6/06	Hoist Engineer
10/4/35	Caroline Nixon	9/11/35	Hosp. Nurse
10/11/35	J. U. Liggett	7/8/35	Miner
10/12/35	Herbert Gartin	5/31/35	Miner
10/12/35	J. W. Cameron	6/11/35	Mucker
10/12/35	C. E. Catt	6/1/35	Mucker
10/21/35	Alex Henderson	8/8/35	Mucker
10/21/35	D. L. Briscoe	4/8/35	Carpenter
10/21/35	E. W. Johnson	4/8/35	Carpenter
10/21/35	E. D. Hoesch	8/3/34	Machinist
10/16/35	D. J. Zigler	10/3/35	Mucker
10/17/35	T. R. Schultz	2/20/34	Miner
10/26/35	S. L. Stewart	8/31/34	Mucker
10/31/35	G. A. Warner	10/5/33	Miner
10/31/35	C. P. Le Mieux	11/1/31	Const. Foreman
10/31/35	J. C. Chapman	10/16/35	Draftsman
10/31/35	W. M. Miller	6/11/35	Mucker
11/1/35	M. W. McPherson	8/14/35	Miner
11/7/35	Milton Carlisle	6/12/35	Mucker
11/12/35	J. C. Nowlin	12/14/17	Hoist Engineer
11/11/35	A. V. Barrett	9/25/35	Miner
11/22/35	F. P. Stitt	11/24/12	Pipeman
11/16/35	Pearl A. Wilcox	11/2/35	Librarian
11/1/35	U. S. Ratterree	8/29/33	Miner
11/26/35	E. W. Conley	2/13/12	Topman

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
11/30/35	Caroline Nixon	11/16/35	Hosp. Nurse
12/6/35	J. H. Stivers	7/8/35	Mucker
12/1/35	P. A. Jones	6/10/35	Mucker
12/6/35	L. L. Kuder	6/25/35	Mucker
12/1/35	W. G. Smith	10/31/35	Mucker
12/5/35	J. P. Williamson	11/1/04	Machinist
12/7/35	R. T. Shaw	1/4/26	Miner
12/5/35	H. L. Lasater	4/24/29	Miner
12/5/35	R. T. Graham	10/31/31	Watchman
11/21/35	J. B. Nowlin	6/10/35	Guniteman
12/1/35	M. N. Kuykendall	5/30/34	Miner
12/1/35	N. W. Nicholas	6/11/35	Mucker
11/21/35	J. J. Eggleston	10/3/35	Miner
12/6/35	J. P. Coughlin	10/3/35	Miner
12/7/35	L. M. Gurnett	10/3/35	Mucker
12/12/35	D. M. Sargent	9/26/33	Elect. Helper
12/14/35	C. J. Kuhlmeyer	7/8/35	Miner
12/23/35	I. C. Guess	4/4/34	Miner
1/2/36	L. S. Mosier	11/16/35	Mucker
12/21/35	B. F. Brooks	6/6/34	Watchman
1/2/36	H. M. Ziesemer	2/19/19	Engineer
1/1/36	K. C. Moon	10/12/35	Mucker
1/6/36	G. R. Beal	9/9/35	Miner
1/7/36	G. E. Gipson	4/23/23	Miner
1/6/36	J. F. Trammell	2/11/27	Miner
1/7/36	F. G. Smith	8/8/35	Mucker
1/7/36	R. P. Hooks	6/10/35	Miner
1/2/36	G. G. Trent	8/18/35	Mucker
1/7/36	Wendell Merrill	6/24/35	Mach. Helper
1/17/36	A. C. Hansen	11/13/35	Mucker
1/15/36	J. H. Daves	1/9/36	Miner
1/14/36	Buck Scott	6/12/35	Mucker
1/11/36	Caroline Nixon	12/15/35	Nurse
1/21/36	Jack O'Brien	6/17/35	Mucker
1/21/36	P. G. Marks	6/10/35	Mucker
1/24/36	T. L. Kester	10/1/35	Mucker
1/21/36	Maude Little	6/28/35	Hotel Maid
1/31/36	W. M. Nance	11/13/22	Electrician
1/31/36	H. J. Hierl	1/1/13	Pharmacist
1/16/36	Beatrice L. Robinson	10/15/28	Nurse
1/31/36	Marie Brogan	7/1/34	Nurse
2/4/36	D. L. Garcia	8/14/35	Miner
2/5/36	L. C. Smith	12/17/35	Miner
2/5/36	Woodrow Loper	1/11/36	Mucker
2/4/36	C. A. O'Brien	10/12/35	Mucker
2/6/36	H. M. Thomson	6/25/35	Mucker
2/5/36	D. P. Giacoletti	5/28/34	B. M. Helper
2/10/36	Tracy Hudgins	4/16/34	Mucker
2/15/36	Charles Bullard	1/5/23	Truck Driver
2/17/36	F. E. Butler	10/3/35	Mucker
2/17/36	L. B. Williams	8/19/35	Mucker
2/24/36	C. K. Schmidt	7/21/35	Mucker
2/29/36	J. C. Hancock	9/24/35	Mucker
2/28/36	W. A. Stevens	12/5/35	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
2/25/36	A. H. Couch	6/11/35	Mucker
2/25/36	H. L. Martin	2/18/36	Mucker
2/25/36	C. W. Carpenter	1/9/36	Miner
2/25/36	Dave Smith	1/11/36	Mucker
2/25/36	E. E. Sanders	11/22/35	Miner
2/25/36	C. E. Thur	7/29/35	Miner
2/16/36	Mrs. J. E. Jordan	11/1/35	Nurse
2/29/36	Mrs. P. E. Andrews	1/16/36	Nurse
3/6/36	L. L. Phelps	1/17/35	Mucker
3/6/36	Arthur Detloff, Jr.	9/1/35	Mucker
3/6/36	S. D. Bates	2/18/36	Miner
3/6/36	A. A. Sabin	12/11/35	Miner
3/4/36	T. C. Millican	3/21/24	B. M. Helper
3/11/36	Howard Dennison	12/5/35	Finlay Operator
3/11/36	L. E. Henderson	9/23/35	Miner
3/12/36	Sam Anderson	10/14/29	Miner
3/11/36	H. S. Robbins	3/10/36	Mucker
3/12/36	Henry Costley, Sr.	9/1/35	Motorman
3/23/36	W. E. A. McElwain	9/9/35	Mucker
3/23/36	Jim Vercellino	9/24/35	Mucker
3/30/36	J. F. Johnson	1/7/36	Mucker
3/26/36	P. L. Harris	3/12/36	Mucker
3/31/36	Deck Chandler	3/10/36	Hosp. Orderly
3/12/36	Mrs. E. C. Hill	3/5/36	Nurse
4/3/36	P. W. Kincheloe	1/9/36	Mucker
4/3/36	Hugh Balke	1/21/36	Miner
4/4/36	D. I. Stutzman	1/7/36	Mucker
4/11/36	J. P. Coughlin	12/30/35	Miner
4/3/36	George Matzell	12/14/15	Foreman
4/15/36	Mrs. Jewell Lee	3/28/36	Nurse
4/15/36	Mrs. Doris Knowles	3/23/36	Nurse
4/15/36	Keith Estes	3/23/36	Disp. Clerk
4/15/36	Dr. F. A. Obrock	1/31/36	Physician
4/17/36	W. E. Merrill	6/26/35	Mucker
4/21/36	C. E. Hamilton	3/17/36	Miner
4/21/36	E. T. Eckel	3/31/36	Miner
4/21/36	D. E. Busby	6/18/35	Mucker
4/20/36	Roy Brooks	9/23/35	Miner
4/16/36	A. M. Evans	4/16/36	Mucker
4/18/36	C. B. Spalding	9/1/34	Watchman
4/22/36	R. R. Rawley	11/2/35	Mucker
4/19/36	Clifford Bailey	4/17/36	Janitor
4/28/36	P. B. Crowell	9/5/24	Miner
4/28/36	Pete Ivanovich, Sr.	1/21/36	Miner
4/30/36	Hilary Page	11/23/35	Mucker
4/30/36	Jack Bostwick	2/22/36	Miner
4/25/36	B. F. Waller	1/21/36	Miner
4/22/36	Mrs. Doris Knowles	3/23/36	Nurse
5/1/36	C. R. Mardon	7/29/35	Miner
5/1/36	C. J. Breslin	6/12/35	Mucker
5/4/36	C. W. Flinn	2/26/36	Miner
5/9/36	J. K. Sellers	1/7/32	Assayer
5/13/36	H. J. Schafer	1/5/34	Mucker
5/9/36	W. A. Jones	12/5/35	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
5/12/36	Claude Hampton	3/24/36	Miner
5/11/36	L. F. Meyer	2/22/36	Miner
5/9/36	R. B. McCoy	2/22/36	Miner
5/11/36	D. H. Spivey	7/1/35	Miner
5/19/36	G. J. Baranic	1/21/36	Miner
5/19/36	J. H. Cain	2/22/36	Miner
5/25/36	John Benko	6/17/35	Miner
5/30/36	L. A. Hartley	3/3/36	Miner
5/30/36	H. C. Johnson	4/25/34	Miner
5/30/36	K. M. Chapman	9/11/35	Hosp. Orderly
5/24/36	Pearl A. Wilcox	5/18/36	Librarian
5/31/36	Mrs. P. E. Andrews	4/28/36	Nurse
6/2/36	R. T. Parker	1/4/36	Miner
6/5/36	T. A. Silva	11/2/35	Mucker
6/9/36	G. L. Brady	11/13/35	Miner
6/9/36	John Lemon	12/17/35	Mucker
6/9/36	Ray Coomer	6/24/35	Mucker
6/9/36	J. M. Cowan	12/1/35	Miner
6/9/36	A. J. Whelan	5/30/36	Mucker
6/9/36	W. R. Gibson	6/1/32	Electrician
6/12/36	J. L. McDonald	4/25/34	Miner
6/13/36	J. L. McNeil	2/13/36	Miner
6/20/36	L. L. Barker	6/8/34	Mucker
6/16/36	P. S. H. Moore	10/17/35	Mucker
6/13/36	C. J. Short	1/2/36	Mucker
6/26/36	Edward Key	1/4/36	Miner
6/24/36	R. H. Kuhlmeyer	7/22/35	Miner
6/26/36	R. H. Shelton	9/23/35	Mucker
6/26/36	M. A. Bonham, Jr.	4/7/36	Mucker
6/26/36	C. R. Gamblin	6/13/36	Mucker
6/26/36	E. R. Bryant	2/1/36	Miner
6/26/36	J. S. Barker	10/10/35	Mucker
6/26/36	E. J. Phillips	10/10/35	Mucker
6/26/36	R. E. Hillman	6/20/35	Miner
6/30/36	John Kries	2/12/35	Miner
6/29/36	W. C. Pope	6/1/31	Miner
6/30/36	C. K. Schmidt	3/11/36	Miner
6/29/36	L. A. Aaron	5/5/36	Miner
6/30/36	L. L. Kuder	1/7/36	Mucker
6/29/36	Bob Gray	6/1/34	Mucker
6/30/36	E. E. Hughes	6/13/35	Mucker
6/30/36	C. W. Carley	7/11/35	Mucker
6/30/36	Dr. Robert Ferguson	1/1/05	Chief Surgeon
6/30/36	K. E. Estes	5/16/36	Disp. Clerk
6/30/36	Mrs. Hilda Andrews	6/6/36	Nurse
6/30/36	Mrs. Jewell Lee	5/28/36	Nurse
6/30/36	Mrs. J. E. Jordan	4/13/36	Nurse
7/2/36	Jess Lucero	9/21/28	Miner
7/1/36	M. W. Merrill	9/27/32	Mach. Helper
7/9/36	C. E. May	12/3/35	Miner
7/8/36	H. H. Johnson	3/24/36	Miner
7/9/36	G. E. Hill	6/24/35	Mucker
7/8/36	Alberto Burrola	4/13/36	Laborer
7/8/36	R. R. Garcia	4/15/36	Laborer

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
7/8/36	R. L. Phipps	10/26/35	Miner
7/15/36	Basil Hobgood	7/15/35	Mucker
7/14/36	J. S. Brown	2/22/36	Miner
7/16/36	J. P. McRae	1/8/36	Mucker
7/23/36	P. F. Brown	4/9/36	Mucker
7/22/36	G. M. Porter	5/14/28	Saw Filer
7/25/36	J. S. Dymock, Jr.	6/13/36	Mucker
7/31/36	Alfred Click	4/11/28	Cager
7/31/36	Tom Hargis	9/23/35	Miner
7/31/36	L. F. Miller	2/11/36	Miner
7/31/36	T. J. Salmon	1/21/36	Miner
7/31/36	Henry Costley, Jr.	6/7/34	Mucker
7/31/36	J. D. Grant	12/17/35	Mucker
7/29/36	John Rooney	6/11/34	Miner
7/31/36	L. E. Riggins	4/18/36	Mucker
7/31/36	M. E. Rundell	3/19/34	Mucker
7/31/36	Jack Acord	6/10/35	Miner
7/31/36	R. C. Herrell	3/2/36	Miner
7/31/36	Carl Andrews	6/12/35	Miner
7/31/36	T. A. Martin	6/11/34	Mucker
7/31/36	R. W. Kincheloe	10/4/35	Miner
7/31/36	L. W. Hildreth	6/7/34	Miner
7/31/36	Carmen Moreno	1/3/31	Laborer
7/31/36	R. G. Callison	9/10/34	Pumpman
7/31/36	T. M. Patten	5/14/36	Machinist
7/31/36	L. L. Kope	11/23/35	Elect. Helper
7/26/36	Mrs. Jewell Lee	7/4/36	Nurse
7/22/36	Mrs. Hilda Andrews	7/13/36	Nurse
7/30/36	D. F. Vonk	7/16/36	Disp. Clerk
8/7/36	F. E. Lapo	5/20/35	Miner
8/6/36	R. D. Hastie	6/24/35	Mucker
8/7/36	B. O. Simmonds	9/27/35	Mucker
8/5/36	Jim Vercellino	7/6/36	Mucker
8/7/36	J. B. Crowell	7/29/35	Miner
8/7/36	J. D. Pierce	6/11/35	Mucker
8/15/36	Harold Webster	4/28/36	Miner
8/14/36	L. C. Clark	6/2/36	Mucker
8/17/36	J. L. Hedgecock	11/13/35	Miner
8/15/36	H. T. Roberts	10/3/35	Mucker
8/17/36	L. H. McCormick	2/12/34	Miner
8/20/36	LeRoy Callison	7/11/36	Mucker
8/20/36	W. T. McSpadden	7/8/36	Mucker
8/20/36	E. R. Pierce	9/20/35	Mucker
8/20/36	John Plavchak	5/12/36	Mucker
8/20/36	Jack Mardon	7/21/36	Mucker
8/20/36	W. G. Smith	1/3/36	Mucker
8/21/36	G. G. Gilman	5/16/36	Mucker
8/22/36	R. H. D'Albini	6/13/35	Finlay Operator
8/21/36	J. O. Clement	3/1/35	Pipeman
8/21/36	R. G. Kelly	10/29/35	B. M. Helper
8/22/36	E. D. Crowell	6/18/36	Welder
8/25/36	Agustin Aguirre	11/28/30	Mucker
8/27/36	Frank Haynes	7/25/35	Mucker
8/26/36	W. L. Henderson	6/17/31	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
8/26/36	R. T. Mallory	4/1/07	Hoist Engineer
8/27/36	F. M. Fergus	3/27/35	B. M. Helper
8/28/36	E. F. Carnes, Jr.	7/9/36	B. S. Helper
8/31/36	W. D. Kirkland	3/31/36	Mucker
8/21/36	T. J. Kennedy	8/20/36	Miner
8/31/36	R. C. James	6/2/36	Mucker
8/31/36	C. G. Dennelley	7/8/35	Miner
8/31/36	Daniel Goode	5/13/36	Mucker
8/31/36	William Carlton	6/24/35	Miner
8/31/36	Westley Daniel	1/11/36	Mucker
8/31/36	J. W. Cameron	6/13/36	Mucker
8/31/36	Douglas Strawn	5/2/36	Handyman
8/29/36	Y. W. Buchanan	1/13/22	Electrician
8/31/36	J. H. Hart, Jr.	4/2/34	Mucker
8/15/36	Josephine Jeffrey	1/12/29	Bookkeeper
8/6/36	Rosilla Hill	7/30/36	Nurse
8/23/36	Hilda Andrews	7/28/36	Nurse
8/1/36	Margaret Spaulding	1/16/36	Hotel Maid
8/30/36	Doris E. Knowles	8/27/36	Nurse
9/4/36	F. E. Baumkirchner	7/9/36	Miner
9/2/36	M. J. Sheridan	6/2/36	Miner
9/4/36	R. R. Schmid	7/21/36	Mucker
9/4/36	G. D. Allen	5/30/36	Mucker
9/4/36	S. A. Rubcic	6/18/35	Mucker
9/1/36	D. P. Allen	5/8/22	Fire Bug
9/1/36	Bennett Greenwall	9/26/23	Miner
9/4/36	J. W. Evans	7/1/35	Miner
9/4/36	G. A. Rylance	6/15/36	Mucker
9/3/36	E. F. Insley	6/2/36	Mucker
9/5/36	W. J. Knox	5/28/36	Miner
9/8/36	W. T. Bendixen	12/17/35	Motor Swamper
9/5/36	J. E. Pickering	5/23/36	Mucker
9/9/36	R. F. Hilburn	5/30/36	Miner
9/5/36	W. P. Sertic	7/9/36	Mucker
9/5/36	R. E. Carpenter	7/10/36	Mucker
9/5/36	W. J. Ferrell	7/21/36	Mucker
9/8/36	J. H. Thomas	7/14/36	Mucker
9/5/36	M. A. Boss	6/13/36	Mucker
9/5/36	John Bendixen	5/26/36	Miner
9/8/36	F. C. Alexander	6/1/36	Miner
9/5/36	Tom McGarry	6/2/36	Miner
9/5/36	D. G. McKinnon	7/21/36	Mucker
9/5/36	H. H. Hunt	7/9/36	Miner
9/8/36	H. E. Story	7/17/36	Machinist
9/5/36	M. J. Dodge	10/26/35	B. M. Helper
9/8/36	T. R. Bell	6/12/35	Miner
9/10/36	S. W. Miller	6/9/36	Miner
9/10/36	G. C. Sanders	8/22/36	Mucker
9/10/36	G. R. Sinclair	6/12/36	Mucker
9/10/36	Fred Landers	8/18/36	Mucker
9/12/36	V. B. Broadus	7/8/36	Mucker
9/11/36	J. B. McPherson	5/30/36	Mucker
9/10/36	H. E. Krohn	8/22/36	Mucker
9/11/36	C. A. Cosgrove	6/17/35	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
9/10/36	B. R. Adams	6/13/36	Mucker
9/11/36	J. A. De Gomez	7/14/26	Mucker
9/10/36	C. L. Morris	5/13/35	Miner
9/14/36	J. C. Andreas	6/2/36	Tool Nipper
9/14/36	J. C. Rogers	9/3/35	Elect. Helper
9/14/36	W. C. Merrill	6/20/35	Elect. Helper
9/15/36	R. P. Treaise	8/22/36	Mucker
9/17/36	W. H. Crane	8/22/35	Miner
9/17/36	G. A. F. Deahler	5/30/36	Miner
9/16/36	C. O. Rosson	9/4/36	Miner
9/19/36	Antonio de la Torre	2/22/36	Miner
9/19/36	W. J. Hill	7/9/36	Mucker
9/4/36	Albert de la Torre	5/14/36	Miner
9/19/36	Constantin Apsouri	5/28/36	Mucker
9/23/36	H. M. Polley	4/9/36	Mucker
9/23/36	C. F. Davenport	8/21/35	Timber Framer
9/22/36	Antonio Garcia	9/4/36	Laborer
9/25/36	M. T. Breland	8/27/36	Mucker
9/28/36	T. E. Colford, Jr.	5/30/36	Mucker
9/28/36	L. V. Hill	1/9/36	Miner
9/30/36	S. D. Morris	1/8/34	Mucker
9/30/36	D. M. Whitlow	8/7/36	Mucker
9/30/36	J. W. Meadows	7/10/35	Motorman
9/30/36	K. N. Webb	8/19/35	Mucker
9/30/36	Alex Henderson	3/5/36	Miner
9/30/36	J. A. Dodge, Jr.	4/21/36	Mucker
9/30/36	Alejandro Ballesteros	4/13/36	Laborer
9/7/36	J. A. Hill	5/1/36	Hotel Clerk
9/4/36	Lovey Jones	7/23/35	Hosp. Cook
9/2/36	Margaret Nicholson	11/22/34	Nurse
9/27/36	Mrs. Hilda Andrews	9/26/36	Nurse
9/30/36	J. E. Schermerhorn	9/8/36	Clerk
10/5/36	R. E. Lee	7/25/36	Miner
10/5/36	M. H. Taylor	7/8/36	Mucker
10/5/36	T. H. Voelker	1/11/36	Mucker
10/6/36	I. W. Gafford	7/9/35	Watchman
10/6/36	V. C. Gentner	9/9/36	Mucker
10/10/36	W. F. Shields	9/29/36	Mucker
10/10/36	W. L. Sholly	5/23/36	Miner
10/12/36	L. J. Kelvey	10/1/36	Mucker
10/12/36	S. S. Foster	9/9/36	Mucker
10/12/36	H. T. Coons	11/23/35	Mucker
10/15/36	J. L. McNeil	7/10/36	Miner
10/15/36	J. A. McClure	1/2/36	Boilermaker
10/12/36	R. C. Mielke	10/1/35	Electrician
10/31/36	H. L. Burkett	9/4/36	Mucker
10/20/36	F. B. Moson, Jr.	4/16/36	Mucker
10/14/36	C. L. Greenwall	1/21/36	Mucker
10/21/36	C. E. Wootan	9/16/36	Miner
10/22/36	John Lemon	7/10/36	Mucker
10/21/36	L. C. Hall	3/31/36	Mucker
10/27/36	J. H. Henderson	7/1/35	Miner
10/26/38	L. E. Harris	12/17/35	Miner
10/21/36	R. R. Roberts	10/15/36	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/26/36	Arnold Carbajal	9/8/36	Laborer
10/27/36	A. J. Bear	10/1/36	Mucker
10/27/36	Bill Trexise	9/10/36	Mucker
10/26/36	W. M. Cook	10/8/36	Mucker
10/31/36	L. M. Jones	9/1/36	Miner
10/31/36	J. S. Barragon	7/1/24	Nipper
10/31/36	L. L. Johnson	9/9/36	Mucker
10/31/36	C. E. Catt	6/11/36	Gunneman
10/31/36	John McGarry	5/31/35	Mucker
10/31/36	M. K. Jean	1/9/36	Mucker
10/31/36	D. G. Zigler	2/16/36	Mucker
10/31/36	H. R. Kees	2/26/36	Miner
10/31/36	G. A. Looman	4/26/36	Miner
10/31/36	E. D. Miller	5/30/36	Mucker
10/31/36	W. A. Andrews	5/26/36	Mucker
10/31/36	D. W. Merrill	9/25/33	Boilermaker Helper
10/2/36	Doris E. Knowles	10/1/36	Nurse
10/10/36	Mrs. J. E. Jordan	10/1/36	Nurse
10/15/36	Mrs. C W. Wilcox	10/1/36	Librarian
10/1/36	Geo. B. Lyman	1/13/19	Mining Engineer
11/5/36	T. D. Bailly	10/17/36	Mucker
11/5/36	J. N. Demas	10/17/36	Miner
11/5/36	Emol Cavaness	10/29/36	Miner
11/5/36	T. L. Jordan	8/24/36	Blacksmith
11/8/36	A. F. Oglesby	9/26/36	Mucker
11/14/36	Bart Green	5/21/36	Mucker
11/14/36	W. R. Brown	4/21/36	Mucker
11/16/36	E. G. Chambers	8/26/36	Mucker
11/16/36	D. G. Thorne	4/22/36	Electrician
11/7/36	A. B. McClure	10/6/33	Janitor
11/15/36	Carl Henderson	3/12/36	Miner
11/12/36	G. D. Crowley	7/13/18	Pump Foreman
11/25/36	J. L. Gomez	6/11/35	Miner
11/25/36	W. A. Hayes	8/15/36	Mucker
11/25/36	F. L. Knorschild	9/30/36	Carpenter Helper
11/26/36	F. M. Hickman	4/22/36	Machinist
11/26/36	Valentine Payne	9/3/36	Mucker
11/30/36	D. T. Hunt	11/13/35	Mucker
11/30/36	G. L. Weatherford	1/7/36	Mucker
11/30/36	M. O. Evans	5/22/35	Mucker
11/1/36	Edward Schaefer	7/28/36	Miner
11/30/36	J. A. Whitfield	7/15/35	Mucker
11/30/36	L. F. Hawkins	10/1/36	Miner
11/30/36	W. R. Phillips	12/8/35	Mucker
11/30/36	W. T. Edwards	8/29/36	Mucker
11/30/36	A. P. Jenkins	3/5/36	Mucker
11/30/36	J. D. Jenkins	2/18/36	Mucker
11/30/36	W. M. Skaggs	5/16/36	Mucker
11/27/36	Milton Carlisle	6/23/36	Mucker
11/30/36	Dr. R. Odiorne	7/15/35	Mucker
11/30/36	J. E. Bullock	8/27/36	Mucker
11/30/36	J. F. Kenney	1/12/34	Mucker
11/30/36	E. J. Frank	12/13/35	B. M. Helper
11/30/36	James Simpson	10/12/35	B. M. Helper

Tightly Bound

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
11/30/36	J. I. Garcia	4/15/36	Laborer
11/21/36	Lily White	6/12/34	Stenographer
12/4/36	I. H. Miller	10/3/36	Mucker
12/1/36	W. H. Clark	11/12/36	Mucker
12/4/36	J. A. Andrews	7/14/36	Mucker
12/1/36	C. E. Jarnigan	11/7/36	Miner
12/2/36	J. F. Hill	5/30/36	Mucker
12/3/36	E. W. Johnson	10/10/36	Miner
12/7/36	Joe Vezzetti	8/13/36	Miner
12/7/36	Herbert Gerdes	6/14/35	Mucker
12/9/36	O. R. Smith	8/20/36	Mucker
12/14/36	N. J. Highfield	9/1/36	Mucker
12/15/36	W. F. Ray	10/19/36	Miner
12/14/36	J. E. Massie	8/24/35	Mucker
12/15/36	R. V. Tate	7/21/36	Mucker
12/14/36	D. J. Shea	12/2/36	Mucker
12/15/36	LeRoy Callison	11/4/36	Mucker
12/8/36	O. S. Hulsey	9/22/36	Mucker
12/16/36	H. S. Hatch	8/29/36	Miner
12/15/36	G. F. Garcia	12/4/36	Laborer
12/16/36	Vincent Smith	6/13/34	Pipeman
12/19/36	S. C. Brooks	6/8/34	Motorman
12/23/36	L. O. Thompson	12/16/36	Mucker
12/31/36	Theodore Brooks	11/17/36	Hosp. Orderly
12/30/36	A. P. Bendixen	2/12/35	Mucker
12/31/36	F. E. Williams	11/15/35	Miner
12/31/36	Jack Jennings	4/30/36	Miner
12/31/36	P. W. Newbury	7/30/25	Hoist Engineer
12/31/36	C. B. French	9/30/36	Carpenter
12/30/36	W. T. Lake	3/1/35	Pipeman
12/15/36	J. F. Henderson, Jr.	12/14/36	Electrician
12/31/36	M. L. Cruz	8/8/35	Laborer
1/4/37	O. C. Stanbrough	11/21/36	Miner
1/4/37	J. B. McPherson	12/21/36	Mucker
1/5/37	M. E. Lane	12/7/36	Mucker
1/4/37	James Dearing	5/7/36	Mucker
1/4/37	W. P. Sertic	12/21/36	Mucker
1/2/37	E. A. Riley	6/13/34	Mucker
1/1/37	C. W. Wittstruck	12/28/36	Miner
1/3/37	M. L. Cruz	8/8/35	Laborer
1/9/37	A. C. Jones	9/15/36	Mucker
1/7/37	R. M. Furr	3/2/36	Miner
1/6/37	T. A. Jeffries	7/8/35	Mucker
1/7/37	Monroe McClintock	9/27/35	Mucker
1/9/37	A. L. Taylor	6/10/36	Miner
1/6/37	Earl Barnes	12/9/36	Miner
1/9/37	J. C. Tucker	12/16/36	Miner
1/9/37	C. G. Wood	10/5/36	Chemist
1/11/37	A. C. Stuart	9/9/36	Miner
1/13/37	R. N. Haynes	5/4/36	Tool Nipper
1/13/37	J. W. Dye	7/22/35	Mucker
1/13/37	L. B. Cary	3/8/35	Mucker
1/13/37	E. T. Allen	3/17/36	Mucker
1/13/37	F. H. McCulloch	7/10/36	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
1/12/37	C. W. Carley	10/17/36	Miner
1/12/37	C. E. Doss	8/20/36	Mucker
1/13/37	F. M. Thompson	5/9/36	Mucker
1/13/37	O. C. Kelly	5/5/36	Mucker
1/13/37	L. B. Keith	8/13/36	Mucker
1/14/37	W. F. Hartin	10/3/36	Mucker
1/15/37	G. N. Williams	6/25/35	Mucker
1/15/37	S. J. Hoener	6/11/35	Mucker
1/15/37	P. W. Keating	8/26/35	Miner
1/15/37	W. M. Taylor	10/4/35	Mucker
1/16/37	J. H. Martineau	9/1/36	Mucker
1/16/37	V. F. Wojick	1/7/36	Clerk
1/18/37	William Miller, Jr.	6/11/35	Miner
1/20/37	L. R. Van Cleve	11/17/36	Miner
1/19/37	Archie Burns	1/11/37	Mucker
1/19/37	M. W. Bouldin	1/13/37	Miner
1/19/37	J. L. O'Brien	10/31/36	Mucker
1/20/37	Ray Coomer	7/11/36	Miner
1/19/37	K. E. Lund	1/4/37	Miner
1/20/37	L. A. Webb	1/7/37	Mucker
1/19/37	J. A. Horvath	11/19/36	Miner
1/20/37	F. D. Wooley	12/18/36	Mucker
1/20/37	Maitland Brereton	10/1/09	Clerk
1/26/37	J. H. Hell	11/17/36	Miner
1/25/37	T. W. McSpaden	8/31/36	Mucker
1/25/37	J. P. Walters	1/5/37	Mucker
1/24/37	John Finney	6/30/17	Watchman
1/27/37	G. B. Beard	9/24/36	Mucker
1/31/37	Bill Younger	10/8/36	Mucker
1/31/37	Cleo Evans	9/19/36	Mucker
1/31/37	W. H. Clark	12/14/36	Mucker
1/31/37	Roy Lynch	9/29/36	Mucker
1/31/37	C. H. Salmons	12/16/36	Miner
1/31/37	Frank Slaten	12/9/36	Mucker
1/31/37	C. M. Mills	7/8/36	Mucker
1/31/37	Herbert Vivian	7/2/32	Miner
1/31/37	C. E. Vandervort	7/10/36	Mucker
1/31/37	H. P. Dean	10/31/36	Mucker
1/31/37	W. T. Edwards	12/14/36	Mucker
1/31/37	D. H. Spivey	10/13/36	Miner
1/31/37	R. T. Howell	8/20/36	Mucker
1/31/37	R. R. R. Rowan	8/26/36	Mucker
1/31/37	H. F. Buntin	8/26/36	Mucker
1/31/37	A. A. Shelton	5/28/36	Mucker
1/31/37	B. D. Wimberley	10/10/36	Miner
1/31/37	T. L. Dunlap	11/3/36	Mucker
1/31/37	E. B. Munson	1/4/37	Tool Nipper
1/31/37	S. W. McNair	1/8/37	Miner
1/24/37	Hilda T. Andrews	10/13/36	Nurse
1/4/37	K. E. Estes	12/21/36	Disp. Clerk
1/24/37	Caroline Nixon	1/22/37	Nurse
1/25/37	Rosilla Hill	1/16/37	Nurse
1/26/37	Nina Barr	1/22/37	Nurse
2/4/37	L. P. Johnson	1/23/37	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
2/5/37	A. R. Olney	10/31/36	Miner
2/5/37	C. R. Lewis	1/23/37	Miner
2/5/37	W. G. Brown	7/28/36	Mucker
2/5/37	C. L. Smythe	1/27/37	Miner
2/8/37	I. D. McCoy	11/21/36	Miner
2/8/37	Pedro Carino	1/26/37	Laborer
2/10/37	J. E. Dawson	7/11/35	Watchman
2/13/37	J. A. Smith	12/21/36	Miner
2/13/37	H. L. Judd	8/13/36	Mucker
2/12/37	W. F. Slater	5/12/36	Shaftman
2/11/37	John Atkinson	12/1/10	Surface Foreman
2/16/37	Herman Ortkiese	9/15/36	Mucker
2/16/37	William Bednorz	8/25/33	Miner
2/16/37	J. E. Mertaugh	9/24/35	Mucker
2/17/37	U. T. Link	6/25/35	Motorman
2/17/37	C. G. Medley	1/21/37	Miner
2/5/37	Edith Wiley	2/1/37	Nurse
2/11/37	Lee Griffin	1/12/37	Porter
2/19/37	J. G. Butler	3/21/29	Miner
2/19/37	John Mazurko	5/21/36	Mucker
2/20/37	J. J. Gordon	8/29/36	Mucker
2/20/37	E. D. Johnson	1/29/37	Pipeman
2/20/37	W. N. Hunt	5/12/36	Miner
2/20/37	V. B. Ackerson	11/21/36	Mucker
2/22/37	C. E. Frizzell	1/13/37	Miner
2/25/37	R. J. Cravey	9/15/36	Miner
2/25/37	C. W. Weathers	8/27/36	Mucker
2/25/37	C. E. Coleman, Jr.	2/13/37	Janitor
2/27/37	A. E. Schupbach	9/1/36	Mucker
2/27/37	W. E. Votaw, Jr.	12/9/36	Miner
2/27/37	R. O. Hickman	2/8/37	Mucker
2/27/37	J. W. Wilson	3/5/36	Mucker
2/26/37	J. C. Shultz	1/15/37	Mucker
2/26/37	D. J. Williams	2/18/37	Miner
2/27/37	C. L. Nutter	2/17/37	Miner
2/27/37	H. W. Thompson	9/26/36	Mucker
2/35/37	Charles White	5/14/36	Miner
2/27/37	G. W. Scott	2/5/37	Miner
2/21/37	Margery Jordan	2/2/37	Nurse
2/2/37	H. J. Hierl	1/29/37	Pharmacist
2/6/37	B. L. Key	1/28/37	Nurse
2/5/37	C. J. Smith	1/28/37	Maid
2/23/37	K. E. Estes	2/22/37	Disp. Clerk
2/14/37	T. T. Brooks	1/25/37	Hosp. Orderly
2/24/37	T. T. Brooks	2/23/37	Hosp. Orderly
2/28/37	Edward Matsen	5/9/36	Miner
2/28/37	Woodrow Walters	9/2/36	Mucker
2/28/37	G. L. Allen	1/21/37	Miner
2/28/37	E. H. Stoner	12/13/36	Miner
2/28/37	R. O. Johnson	12/16/36	Miner
2/28/37	T. W. Bignell	12/16/36	Miner
2/28/37	M. F. Powers	12/1/36	Miner
2/28/37	O. E. Edwards	12/13/37	Miner
2/28/37	S. C. Oquinn	5/7/36	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
2/28/37	H. C. Miles	7/8/35	Miner
2/28/37	W. A. Graham	8/29/36	Mucker
2/28/37	R. P. Peck	11/20/36	Mucker
2/28/37	I. D. McCoy	2/12/37	Miner
2/28/37	C. A. Adams	11/19/36	Miner
2/28/37	H. S. Kennedy	8/29/36	Mucker
2/28/37	B. F. Jacobson	10/19/36	Mucker
2/28/37	J. D. Whittle	9/22/36	Mucker
2/28/37	George Wilson	1/23/37	Miner
2/28/37	J. M. Ochoa	8/23/36	Laborer
2/28/37	T. H. Conger	1/29/37	Electrician
3/1/37	C. L. Corbett	5/13/35	Miner
3/3/37	J. P. Stapley	2/17/37	Miner
3/3/37	S. J. Hoener	2/13/37	Miner
3/3/37	F. W. D'Albini	4/4/34	Miner
3/8/37	Jack Hawn	2/8/37	Miner
3/8/37	E. F. Enos	10/1/36	Mucker
3/9/37	W. W. Adams	9/15/36	Mucker
3/9/37	Steve Davids	1/30/37	Miner
3/9/37	R. E. Diviney	1/30/37	Miner
3/8/37	E. C. Lytle	1/2/35	Miner
3/9/37	E. C. Gregory	3/1/37	Boilermaker
3/9/37	R. E. McKinnon	12/1/36	Miner
3/10/37	N. J. Miller	12/21/36	Miner
3/10/37	H. C. Miller	1/28/37	Miner
3/10/37	Carl Fuller	1/12/08	Foreman
3/10/37	F. I. Lindau	3/8/37	Draftsman
3/1/37	R. L. Whitlow	10/1/35	Mucker
3/13/37	J. E. Werner	6/17/36	Mucker
3/12/37	P. C. Lawless	2/24/37	Miner
3/16/37	R. C. Dickey	10/8/36	Guniteman
3/16/37	F. H. McCulloch	1/21/37	Mucker
3/16/37	H. L. Burkett	3/3/37	Mucker
3/16/37	C. F. Shields	10/22/35	Mucker
3/17/37	J. L. Beiler	3/8/37	Miner
3/12/37	A. W. Furr	1/25/34	Miner
3/19/37	I. W. Carpenter	2/17/37	Miner
3/19/37	E. M. Broadus	5/13/36	Mucker
3/19/37	J. A. Hoffman	1/30/37	Miner
3/18/37	J. P. Carter	1/21/37	Miner
3/23/37	George Snodgrass	2/22/37	Miner
3/23/37	A. A. Scheffler, Jr.	9/3/36	B. M. Helper
3/22/37	William Minsey	2/6/31	Hotel Clerk
3/23/37	E. R. Harmon	11/7/36	Mucker
3/25/37	S. C. Merkley	9/9/36	Mucker
3/24/37	W. H. Harris	1/30/37	Miner
3/25/37	F. C. Cawthon	10/13/36	Miner
3/29/37	A. J. Hallsted	1/7/37	Mucker
3/29/37	J. W. Muldoon	2/15/37	Mucker
3/29/37	L. W. Parten	8/20/36	Mucker
3/30/37	P. B. Smith	3/15/37	Mucker
3/29/37	R. G. Liebmann	2/26/37	Miner
3/30/37	J. J. Martin	3/3/37	Miner
3/30/37	A. E. Curler	9/15/36	Mucker

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Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
3/30/37	C. E. Catt	12/29/36	Mucker
3/30/37	Floyd Host	1/21/37	Miner
3/30/37	B. L. Kinnard	1/30/37	Miner
3/30/37	G. K. Housley	12/6/36	Miner
3/30/37	A. A. Hufstutler	10/17/36	Mucker
3/30/37	Gordon Hodges	1/11/36	Mucker
3/30/37	G. A. Looman	11/4/36	Miner
3/30/37	J. P. Townsend	5/11/36	Mucker
3/30/37	L. G. Stacey	9/29/36	Mucker
3/11/37	James Coleman	1/28/37	Hosp. Orderly
4/1/37	Chris Klineburger	3/31/36	Watchman
4/5/37	G. I. Richman	1/4/36	Mucker
4/2/37	L. J. de Montegre	3/3/37	Miner
4/5/37	T. J. Salmon	1/22/37	Miner
4/5/37	T. A. Crutsinger	5/13/36	Mucker
4/5/37	R. L. Simpson	9/23/35	Mucker
4/2/37	J. W. Congrove	2/19/37	Miner
4/2/37	R. L. Cuyler	2/26/37	Miner
4/5/37	J. N. Oliver	2/13/36	Miner
4/7/37	W. C. Miller	12/22/36	Mucker
4/8/37	Edward Flynn	4/9/26	Miner
4/9/37	H. B. Staas	2/5/37	Miner
4/9/37	J. E. Sherley	2/19/37	Miner
4/9/37	F. R. Dawson	3/22/37	Miner
4/8/37	Robert Simpson	3/22/37	Miner
4/1/37	E. N. Pennebaker	3/13/35	Geologist
4/9/37	A. W. Constantine	2/26/37	Miner
4/9/37	J. R. Turnbull	2/9/37	Miner
4/9/37	P. A. O'Brien	2/17/37	Miner
4/12/37	L. B. Coltum	3/1/37	Miner
4/13/37	F. H. Heckler	1/23/37	Mucker
4/12/37	S. G. Beckworth	1/30/37	Miner
4/12/37	J. A. Morrow	1/20/37	Miner
4/12/37	H. E. Barker	10/30/23	Blacksmith
4/19/37	A. E. Elliott	7/8/35	Miner
4/16/37	C. E. Carothers	1/26/37	Miner
4/5/37	L. M. Pastorius	3/24/37	Miner
4/20/37	F. T. Baxter	11/10/36	Mucker
4/17/37	L. S. Armstrong	11/23/35	Mucker
4/19/37	V. B. Ackerson	3/2/37	Mucker
4/19/37	Ira Hartman	4/17/37	Mucker
4/21/37	H. A. Hall	3/10/36	Motorman
4/21/37	J. P. McRae	9/2/36	Mucker
4/23/37	A. L. Duncan	3/29/37	Miner
4/23/37	W. S. Lynch	1/7/37	Tool Nipper
4/23/37	Beldon Smith	3/1/37	Mucker
4/21/37	Andrew Angle	12/1/36	Miner
4/22/37	J. M. Karvonen	2/22/37	Miner
4/23/37	Melvin Stockman	12/9/36	Miner
4/27/37	J. H. Henderson	10/31/36	Miner
4/28/37	J. L. White	3/5/37	Miner
4/28/37	L. E. Rivera	4/15/27	Laborer
4/30/37	F. O. Lott	12/16/36	Mucker
4/29/37	C. D. Whelan	5/16/24	Miner

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
4/30/37	Roy O'Leary	4/28/36	Motorman
4/30/37	E. R. Hill	8/7/35	Mucker
4/30/37	C. W. Carley	2/4/37	Miner
4/30/37	Earl Carnel	10/16/29	Mucker
4/30/37	A. R. Crawford	10/1/36	Mucker
4/29/37	R. R. Corp	12/9/36	Miner
4/30/37	N. C. Warhurst	2/17/37	Miner
4/30/37	E. D. Dickerson	3/1/37	Miner
4/29/37	A. J. Combel	2/14/35	Mach. Helper
4/4/37	K. E. Estes	3/20/36	Disp. Clerk
4/23/37	E. S. Lucas	1/8/37	Hosp. Janitor
4/24/37	Margery Jordan	3/3/37	Nurse
4/24/37	Doris E. Knowles	4/23/37	Nurse
5/1/37	C. G. Woodworth	3/8/37	Mucker
5/1/37	D. A. Page	4/21/37	Miner
5/2/37	Richard Nitsch	6/25/12	Repeman
5/4/37	W. R. Beauford	4/28/37	Mucker
5/4/37	J. L. Peck	10/6/36	Mucker
5/5/37	J. A. Windham	2/18/36	Mucker
5/5/37	D. M. Whitlow	2/11/37	Mucker
5/5/37	John Snyder	12/18/36	Miner
5/6/37	R. E. Fletcher	2/15/37	Mucker
5/7/37	C. W. Ravensgraft	2/17/37	Miner
5/12/37	C. W. Brown	3/19/37	Miner
5/12/37	A. B. Willemoes	3/5/37	Mucker
5/12/37	G. F. Buttler	4/21/36	Mucker
5/11/37	R. L. Huntley	4/27/37	Mucker
5/13/37	J. C. Gonzales	4/15/37	Laborer
5/15/37	C. B. Valenzuela	3/22/37	Laborer
5/10/37	Robert Meier	4/27/37	Clerk
5/17/37	R. W. Hamel	11/10/36	Miner
5/18/37	T. L. Kinndy	5/2/36	Mucker
5/17/37	A. B. Teran	4/2/37	Laborer
5/20/37	C. T. Moore	5/16/36	Mucker
5/21/37	H. O. Williams	2/11/37	Miner
5/21/37	H. F. Ramsey	2/19/37	Miner
5/25/37	J. H. Hatton	2/6/37	Mining Engineer
5/25/37	F. M. Knoll	4/6/37	Miner
5/25/37	E. W. Markham	1/13/37	Carpenter
5/24/37	Melecio Robles	4/24/37	[illegible]rer
5/26/37	Howard Dennison	12/7/36	[illegible]ay Operator
5/26/37	W. A. Carnahan, Jr.	2/16/37	Mucker
5/27/37	L. O. Beecroft	7/9/36	Mucker
5/29/37	E. F. Allen	2/5/37	Miner
5/29/37	Otho Fowler	2/16/36	Miner
5/31/37	O. M. Dennis, Jr.	5/12/37	Mucker
5/9/37	Margery Jordan	5/1/37	Nurse
5/17/37	Nina Barr	5/5/37	Nurse
5/20/37	J. W. Patterson	4/24/37	Janitor
5/31/37	F. F. Cooper	3/3/37	Miner
5/31/37	E. L. Blalock	11/10/36	Mucker
5/31/37	R. D. Parker	3/15/36	Mucker
5/31/37	J. V. Cook	3/22/37	Miner
5/31/37	E. H. Childers	1/8/37	Mucker

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Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
5/31/37	H. B. Cares	2/13/37	Miner
5/31/37	R. E. Davenport	2/13/37	Mucker
5/31/37	L. M. Berry	2/15/36	Mucker
5/31/37	C. L. Bragg	5/9/36	Miner
5/31/37	Lester Skousen	9/9/36	Mucker
5/31/37	W. F. Parker	9/15/36	Mucker
5/31/37	W. E. Haygood	4/28/36	Mucker
5/31/37	M. R. Bigham	8/29/36	Mucker
5/31/37	B. O. Simmonds	11/30/36	Mucker
5/31/37	P. L. Smith	1/11/37	Mucker
5/31/37	W. S. Crow	11/19/36	Miner
5/31/37	Cliff Cannon	1/11/37	Miner
5/31/37	O. L. Roberts	2/15/37	Miner
5/31/37	H. H. Fullenwider	2/16/37	Miner
5/31/37	H. J. Fullenwider	2/16/37	Miner
5/31/37	Fred Randolph	3/19/37	Miner
5/31/37	Armando Chavez	9/22/36	Laborer
5/31/37	Juan Bernal	9/23/36	Laborer
6/2/37	J. J. Feeney	5/19/37	Mucker
6/2/37	O. D. Haynie	5/9/36	Mucker
6/4/37	C. D. Cotton	2/16/37	Miner
6/8/37	J. W. Lynch	4/6/37	Miner
6/7/37	W. M. Dinsmore	3/22/37	Miner
6/7/37	R. G. Liebmann	5/7/37	Miner
6/7/37	L. P. Anderson	1/30/37	Miner
6/8/37	G. J. Simley	1/29/37	Painter
6/10/37	R. E. Martyr	1/2/36	Mucker
6/8/37	C. S. Bennett	11/17/36	Miner
6/9/37	D. N. Holloway	5/5/37	Miner
6/11/37	James Costello	4/14/37	Miner
6/12/37	M. N. Besich	6/3/37	Miner
6/10/37	L. M. Hall	8/25/36	Miner
6/10/37	J. C. Mathis	2/15/37	Mucker
6/15/37	C. H. Johnston	4/16/36	Miner
6/15/37	E. E. Harris	3/13/36	Mucker
6/15/37	G. R. Jackson	4/28/37	Mucker
6/16/37	K. K. Howell	1/18/37	Miner
6/19/37	R. O. Hickman	10/4/35	Mucker
6/18/37	A. T. Anderson	2/18/36	Miner
6/19/37	J. D. Pierce	8/25/36	Motorman
6/17/37	R. C. Wood	9/19/36	Miner
6/21/37	John Smith	6/14/35	Mucker
6/19/37	John Peterson	2/5/37	Miner
6/6/37	Margaret E. Connelly	6/5/37	Nurse
6/22/37	A. M. Allen	10/23/36	Mucker
6/22/37	T. R. Blair	3/10/37	Mucker
6/23/37	C. W. Loyd	6/4/37	Miner
6/24/37	D. C. Johnston	3/22/37	Miner
6/24/37	R. M. Cotton	9/9/36	Mucker
6/24/37	J. J. Ward	3/19/37	Miner
6/24/37	R. E. Burns	1/11/37	B. M. Helper
6/25/37	J. H. Irwin	6/19/35	Mucker
6/29/37	Millard Atkins	11/12/36	Miner
6/29/37	J. C. Kelly	3/1/37	Miner

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Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
6/29/37	Ambrose Latimer	2/18/37	Miner
6/30/37	B. R. Jones	5/27/37	Mucker
6/30/37	M. M. Wright	7/10/35	Mucker
6/30/37	J. M. Sanders	4/28/37	Mucker
6/20/37	Edith B. Wiley	6/1/37	Nurse
6/18/37	David Vonk	6/4/37	Disp. Clerk
6/30/37	J. R. Hall	9/5/36	Mucker
6/30/37	Lloyd Votaw	12/9/36	Miner
6/30/37	H. O. Thornton	3/3/37	Mucker
6/30/37	G. L. Elston	2/13/37	Mucker
6/30/37	W. H. Green	11/12/36	Mucker
6/30/37	Carl Andrews	4/30/37	Miner
6/30/37	Ernest Snyder	12/29/36	Miner
6/30/37	L. W. Brown	5/18/37	Miner
6/30/37	G. S. Nelson	1/8/37	Mucker
6/30/37	R. D. Nielson	7/12/35	Mucker
6/30/37	D. T. Hunt	1/8/37	Miner
6/30/37	R. M. Elston	4/2/37	Miner
6/30/37	J. W. Muldoon	4/6/37	Mucker
6/30/37	J. E. McClain	4/9/37	Miner
6/30/37	B. E. Armstrong	9/28/36	Mucker
6/30/37	L. H. Sevey	1/28/37	Miner
6/30/37	A. V. Massett	1/7/37	Mucker
6/30/37	Wade Lacey	2/13/37	Miner
6/30/37	O. E. Dillon	3/1/37	Miner
6/30/37	Eloise Giffen	5/5/37	Stenographer
7/2/37	J. W. Lloyd	5/13/37	Mucker
7/1/37	C. M. Carley	6/21/37	Mucker
7/1/37	A. W. Fuller	6/13/35	Mucker
7/2/37	G. D. Peters	4/30/37	Miner
7/2/37	A. G. Lewis	4/9/37	Miner
7/3/37	G. R. Johnson	2/16/37	Mucker
7/1/37	M. C. Alcantar	4/2/37	Laborer
7/1/37	M. J. Cosgrove	9/15/15	Jigger Boss
7/7/37	T. J. Kearney	10/1/36	Mucker
7/7/37	R. L. Hodges	3/29/37	Miner
7/7/37	L. J. O'Neill	5/20/37	Miner
7/8/37	L. L. Anderson	3/22/37	Miner
7/8/37	Ike Gorman	12/30/36	Mucker
7/9/37	R. F. Hobbs	9/1/36	Miner
7/8/37	R. F. J. Wicke	5/26/36	Mucker
7/12/37	C. W. Weathers	6/1/37	Miner
7/13/37	A. J. Holland	8/29/36	Miner
7/14/37	J. M. Dunn	5/7/36	Mucker
7/13/37	D. G. McNeill	6/22/37	Mucker
7/13/37	R. O. Skinner	3/26/37	Miner
7/13/37	D. L. Jarvis	5/24/36	Miner
7/16/37	C. C. Pickard	6/1/37	Mucker
7/16/37	R. F. Conway	6/3/37	Mucker
7/19/37	E. A. Fehring, Jr.	4/6/37	Mucker
7/19/37	C. W. Loyd	7/7/37	Miner
7/20/37	J. E. Grant	4/2/37	Truck Driver
7/22/37	F. A. Montgomery	9/10/36	Miner
7/26/37	Al Smith	6/13/35	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
7/20/37	C. W. Large	5/26/37	Mucker
7/21/37	C. F. Mechler	6/2/37	Miner
7/22/37	H. E. Bohrer	4/20/37	Mucker
7/23/37	P. R. Abril	5/29/37	Laborer
7/22/37	H. W. Lynch	3/12/37	Mucker
7/24/37	James Dearing	1/22/37	Miner
7/24/37	L. C. Clark	5/26/37	Mucker
7/23/37	F. E. Nuno	2/15/37	Laborer
7/29/37	R. I. Woodworth	3/5/36	Mucker
7/29/37	J. E. Linsley	12/16/36	Miner
7/28/37	W. R. Phillips	4/20/33	Mucker
7/28/37	W. E. Tomkinson	2/12/37	Tool Nipper
7/31/37	Florence Peters	7/16/34	Stenographer
7/3/37	Edward Burke	6/20/37	Hosp. Orderly
7/18/37	Chloeon Smith	5/31/37	Maid
7/28/37	Tokie Hudson	7/14/37	Nurse
7/29/37	Susan C. Boyle	5/10/37	Nurse
7/31/37	Robert Jackson	11/10/36	Mucker
7/31/37	Charlie Shelton	12/18/36	Mucker
7/31/37	J. A. Pierce	2/17/37	Mucker
7/31/37	R. M. Wilder	3/24/37	Miner
7/31/37	G. E. Anderson	1/11/37	Mucker
7/31/37	A. B. Doolittle	1/21/37	Miner
7/31/37	Clyde Whipple	2/4/37	Miner
7/31/37	G. J. Snyder	7/28/36	Mucker
7/31/37	F. W. Sanders	1/8/37	Miner
7/31/37	N. L. Benich	5/16/36	Mucker
7/31/37	T. F. Perkins	7/8/36	Mucker
7/31/37	W. R. Williamson	9/22/36	Mucker
7/31/37	H. L. Foreman	2/24/37	Miner
7/31/37	J. R. Bowen	6/12/37	Mucker
7/31/37	R. P. Anderson	4/16/37	Miner
7/31/37	S. M. Akin	1/10/37	Mucker
8/2/37	W. H. Hooper	5/7/37	Mucker
8/2/37	R. E. Pace	6/17/35	Miner
8/2/37	M. R. Dungan	6/29/35	Mucker
8/3/37	Roy Lynch	2/13/37	Miner
8/4/37	R. E. Birdwell	5/21/37	Miner
8/3/37	J. W. Wilson	5/5/37	Mucker
8/5/37	Monty Wathney	10/29/36	Miner
8/5/37	F. A. Baugh	7/24/37	Mucker
8/5/37	L. A. Goodwin	7/10/36	Mucker
8/7/37	T. L. Greenwood	11/12/36	Mucker
8/7/37	C. T. Bagley	2/9/37	Miner
8/7/37	J. H. Schissler, Jr.	6/8/37	Mucker
8/6/37	F. S. Knight	6/29/37	Mucker
8/9/37	D. B. Byfield	3/22/37	Miner
8/9/37	M. W. Byfield	7/9/37	Miner
8/9/37	L. J. Byfield	7/9/37	Miner
8/9/37	A. H. Staniger	7/20/37	Miner
8/10/37	L. A. Lee	2/17/37	Miner
8/10/37	R. G. Charlton	6/29/37	Mucker
8/10/37	A. L. Avilez	2/9/37	Sample Bucker
8/14/37	C. W. Pruitt	5/20/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
8/13/37	S. A. Mason	5/4/37	Miner
8/14/37	J. H. Headrick	12/18/36	Mucker
8/14/37	E. J. Caldwell	6/10/37	Mucker
8/14/37	C. C. Cameron	6/9/37	Mucker
8/16/37	Arthur Detloff, Jr.	10/29/36	Miner
8/17/37	G. G. Gilman	5/26/37	Mucker
8/12/37	M. R. Tovrea	9/24/36	Mucker
8/17/37	G. O. Younger	5/27/37	Mucker
8/19/37	Fowler Beach	8/24/36	Motorman
8/18/37	T. E. Schackleford	4/17/37	Mucker
8/19/37	J. J. Cannon	2/24/37	Handyman
8/17/37	E. F. Carnes, Jr.	7/13/37	B. S. Helper
8/20/37	J. E. Wall	1/21/36	Miner
8/20/37	R. K. Beeth	6/24/37	Mucker
8/21/37	J. W. Erickson	6/24/35	Miner
8/20/37	J. H. Bendixen	5/28/37	Miner
8/20/37	W. J. Hunt	5/28/37	Mucker
8/20/37	W. E. Lawson	5/27/37	Mucker
8/20/37	R. L. Whitlow	7/24/37	Miner
8/20/37	D. F. Blair	4/20/37	Mucker
8/21/37	K. L. Longan	7/20/37	Miner
8/20/37	A. T. Hoy	11/4/36	Elec. Apprentice
8/23/37	B. H. Belluzzi	6/25/37	Mucker
8/24/37	J. O. Nigra	6/11/37	Mucker
8/23/37	Carl Henderson	2/4/37	Miner
8/24/37	G. E. Taylor	9/26/36	Miner
8/25/37	Luis Reyna	6/12/35	Miner
8/24/37	A. C. Hansen	5/7/36	Finlay Operator
8/24/37	A. M. Thompson	2/13/36	Miner
8/25/37	W. P. Sertic	7/20/37	Mucker
8/24/37	J. N. Hall	4/22/37	Mucker
8/27/37	R. C. James	5/27/37	Mucker
8/27/37	W. M. Miller	3/24/37	Miner
8/27/37	F. A. Daubin, Jr.	6/12/37	Mucker
8/30/37	M. N. Besich	6/14/37	Mucker
8/30/37	E. C. Tallant	5/15/37	Mucker
8/30/37	A. D. Thompson	12/18/36	Mucker
8/27/37	Mrs. J. R. Higdon	8/14/37	Hosp. Cook
8/23/37	Chester Brooks	7/23/37	Asst. Chemist
8/22/37	Bostick Williams	8/7/37	Pharmacist
8/21/37	Rosilla Hill	8/16/37	Nurse
8/28/37	Nina Barr	8/24/37	Nurse
8/29/37	Chloeon Smith	8/27/37	Maid
8/27/37	Maria Renteria	5/5/37	Maid
8/31/37	R. H. Buckman	4/30/37	Miner
8/31/37	W. R. Mayo	3/17/37	Miner
8/31/37	J. D. Hodges	3/17/37	Miner
8/31/37	M. J. Wohler	1/8/37	Mucker
8/31/37	R. W. Stauss	3/8/37	Miner
8/31/37	R. L. Noble	6/12/35	Miner
8/31/37	W. L. Smith	6/13/35	Mucker
8/31/37	E. M. Childress	6/18/37	Mucker
8/31/37	L. H. McCormick	8/26/36	Miner
8/31/37	A. V. Childers	5/28/36	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
8/31/37	John O'Malley	2/4/37	Miner
8/31/37	W. W. Sharpe, Jr.	8/30/33	Miner
8/31/37	R. C. Wood	6/24/37	Miner
8/31/37	P. E. Rustin	5/8/37	Mucker
8/31/37	Richard Treece	4/20/37	Mucker
8/31/37	R. A. McFarlane	5/14/37	Miner
8/31/37	Pete Ivanovich, Jr.	6/10/35	Mach. Helper
8/31/37	C. E. Ladd	6/3/37	Welder
8/31/37	John Flores	7/22/37	Laborer
8/31/37	Aniceto Gonzales	5/15/37	Laborer
9/1/37	J. A. DeGomez	10/1/36	Swamper
9/1/37	M. M. Simpson	7/22/35	Motorman
9/1/37	L. F. Coates	6/10/35	Miner
9/1/37	C. L. Carnahan	10/23/36	Vent. Man
9/1/37	C. H. Mask	6/24/37	Mucker
9/1/37	D. M. Hurst	4/29/36	Miner
9/1/37	K. N. Cupp	6/12/37	Mucker
9/1/37	E. F. Cox	6/10/37	Mucker
9/2/37	Edward Toffler	5/18/37	Mucker
9/2/37	V. J. Berlendis	2/16/37	Mucker
9/2/37	J. E. Holt	6/16/37	Mucker
9/2/37	Gilbert Gardner	4/2/37	Motor Swamper
9/3/37	D. C. Root	5/29/37	Mucker
9/3/37	P. G. Prather, Jr.	6/1/37	Miner
9/3/37	J. W. Kerwin	1/3/36	Mucker
9/3/37	W. J. Knox	5/26/37	Miner
9/3/37	J. C. Sessions	6/22/37	Mucker
9/3/37	Paul Mills	4/30/37	Miner
9/3/37	E. B. Farnsworth	5/4/36	Mucker
9/4/37	C. R. Van Cleve	1/15/37	Mucker
9/3/37	W. G. Clark	6/4/37	Mucker
9/3/37	C. S. Penn	4/20/37	Mucker
9/3/37	Robert Long	6/29/37	Mucker
9/3/37	H. J. Reed	6/22/37	Mucker
9/3/37	R. R. Schmid	6/8/37	Mach. Helper
9/4/37	W. J. Hill, Jr.	1/20/37	Mucker
9/7/37	G. A. Rylance	6/15/37	Mucker
9/7/37	Thomas Brice	5/19/37	Mucker
9/4/37	R. E. Chevalier	6/12/37	Mucker
9/8/37	E. M. Baumkirchner	6/8/37	Mucker
9/8/37	R. L. Boat	6/8/37	Mucker
9/8/37	J. B. McPherson	6/15/37	Mucker
9/8/37	R. F. Hilburn	6/5/37	Miner
9/8/37	E. P. Mendoza	2/3/37	Laborer
9/9/37	J. H. Macia	6/22/37	Mucker
9/9/37	C. J. Beecroft	5/21/37	Mucker
9/11/37	B. R. Adams	6/8/37	Mucker
9/10/37	T. W. McSpadden	6/9/37	Mucker
9/9/37	Roscoe Parker	4/12/37	Painter
9/11/37	R. G. Kelly	7/2/37	B. M. Helper
9/11/37	Leona McGuire	1/25/37	Hotel Maid
9/13/37	G. D. Allen	6/8/37	Mucker
9/13/37	A. G. McClure	6/2/36	Mucker
9/13/37	E. L. Keeth	6/12/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
9/13/37	M. E. Williamson	8/31/37	Miner
9/13/37	M. L. Forrey	6/11/35	Miner
9/13/37	M. A. Boss	6/10/37	Mucker
9/13/37	B. R. Jerman, Jr.	6/23/37	Mill Helper
9/8/37	M. A. Bateman	1/19/37	Employment Agent
9/13/37	J. E. Pickering	6/10/37	Mucker
9/14/37	G. H. Crist	6/11/37	Mucker
9/14/37	K. E. Estes	6/21/37	Mucker
9/14/37	A. J. King	1/18/37	Handyman
9/15/37	M. J. Dodge	6/11/37	Mucker
9/14/37	J. C. Andreas	6/8/37	Mucker
9/14/37	A. F. Kristovich	6/21/37	Mucker
9/15/37	A. B. Allen	12/29/36	Miner
9/15/37	L. L. Myers	12/7/36	Miner
9/15/37	J. S. Dymock, Jr.	7/20/37	B. M. Helper
9/16/37	W. T. Bendixen	6/4/37	Mucker
9/16/37	C. A. Cosgrove	6/9/37	Mucker
9/16/37	N. F. Hazen	1/18/37	Miner
9/16/37	C. T. Bostick	8/5/37	Mucker
9/16/37	F. A. Rutledge	9/1/36	Mucker
9/17/37	J. B. Douthett	7/14/36	Miner
9/16/37	A. D. Lawson	11/12/36	Miner
9/16/37	C. L. Morris	1/30/37	Miner
9/17/37	J. F. Barnes	7/8/37	Miner
9/16/37	D. F. Vonk	7/8/37	Mucker
9/18/37	G. R. Sinclair	7/2/37	Mucker
9/16/37	W. C. Merrill	7/20/37	Elect. Helper
9/16/37	J. C. Rogers	7/20/37	Elect. Helper
9/17/37	D. B. Corral	7/26/37	Laborer
9/11/37	H. L. Henrie	6/22/37	Mach. Helper
9/21/37	J. H. Stewart	6/8/37	Mucker
9/21/37	J. D. Fowler	12/5/35	Mucker
9/21/37	Jack Hawn	3/13/37	Miner
9/21/37	J. M. Bowman	5/11/36	Mucker
9/18/37	A. V. Garcia	6/5/37	Laborer
9/18/37	F. R. Burgess	6/5/37	Laborer
9/18/37	C. L. Chavez	2/3/37	Laborer
9/21/37	J. M. West	5/4/37	Mucker
9/22/37	V. L. Cook	5/12/37	Mucker
9/22/37	Andrew Angle	6/29/37	Miner
9/23/37	R. F. Sprague	5/11/37	Pipe Helper
9/22/37	J. G. Laughlin	10/4/35	Conv. Helper
9/22/37	R. J. Wheat	6/9/34	Electrician
9/2/37	A. N. Breslin	5/25/37	Hosp. Orderly
9/23/37	Pearl A. Wilcox	9/3/37	Librarian
9/25/37	C. E. Taylor	5/28/37	Mucker
9/25/37	G. M. Anderson	2/9/37	Mucker
9/27/37	F. J. Murphy	2/22/37	Machinist
9/28/37	J. F. Teran	12/30/36	Laborer
9/29/37	C. T. Everett	11/9/36	Miner
9/29/37	C. E. Bertling	5/7/37	Mucker
9/29/37	L. A. Lemon	5/26/37	Mucker
9/30/37	A. P. Bendixen	6/23/37	Mucker
9/30/37	R. S. Wallace	10/8/36	Finlay Operator

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
9/9/37	Susan C. Boyle	8/31/37	Nurse
9/16/37	Dr. G. W. Patterson	1/10/37	Physician
9/17/37	Annie Bright	10/11/20	Maid
9/17/37	Ernest Bright	4/26/34	Hosp. Orderly
9/20/37	Margery Jordan	9/2/37	Nurse
9/20/37	Tokie Hudson	8/16/37	Nurse
9/30/37	Thelma Hall	7/9/37	Stenographer
9/30/37	J. E. Chantry	11/10/36	Mucker
9/30/37	C. D. Hensley	9/4/36	Mucker
9/30/37	J. P. Smith	4/29/37	Miner
9/30/37	C. W. Brown	5/17/37	Miner
9/30/37	F. A. Costey	8/1/36	Motorman
9/30/37	M. B. Lovett	1/8/37	Mucker
9/30/37	M. B. Walden	2/2/37	Miner
9/30/37	O. D. Chase	6/24/37	Mucker
9/30/37	H. E. Carter	1/9/36	Mucker
9/30/37	R. W. Merkley	9/9/36	Mucker
9/30/37	F. T. Baxter	4/21/37	Mucker
9/30/37	C. F. Dahlgren	2/22/37	Mucker
9/30/37	H. M. Hunter	9/15/36	Mucker
9/30/37	R. S. Walsh	8/13/36	Mucker
9/30/37	J. E. Price	11/21/36	Mucker
9/30/37	G. C. Frazier	7/13/37	Mucker
9/30/37	Clyde Davis	9/1/36	Mucker
9/30/37	N. A. Bell	2/9/37	Miner
9/30/37	R. J. Mann	1/26/37	Miner
9/30/37	O. M. Thompson	1/26/37	Miner
9/30/37	E. J. Martineau	3/22/37	Miner
9/30/37	H. H. Buckner, Jr.	3/26/37	Miner
9/30/37	R. R. Angle	3/24/37	Mucker
9/30/37	T. O. Luedtke	5/21/37	Mucker
9/30/37	N. S. Kindle	5/21/37	Mucker
9/30/37	E. J. Beauford	4/6/37	Miner
9/30/37	H. P. Roberts	2/16/37	Miner
9/30/37	J. C. Baldwin	2/11/37	Miner
9/30/37	J. L. McCaddon	2/11/37	Miner
9/30/37	B. B. Bailey	2/11/37	Mucker
9/30/37	Kenneth Crowder	3/19/37	Miner
9/30/37	Ray Coomer	8/3/37	Miner
10/4/37	F. R. Quill	5/20/37	Mucker
10/2/37	R. R. McPeters	11/12/36	Miner
10/1/37	V. R. Poulter	4/28/36	Mucker
10/4/37	Jeff Oglesby	7/7/37	Miner
10/4/37	A. H. Turley	3/10/37	Mucker
10/5/37	E. Van Treese	8/5/37	Miner
10/4/37	R. A. Deets	3/1/37	Motorman
10/7/37	C. G. McGuire	3/3/37	Miner
10/7/37	Irvin Western	1/20/36	Miner
10/7/37	R. O. Malle	8/13/36	Miner
10/6/37	W. N. Rushin	2/18/37	Mucker
10/7/37	A. M. Carrillo	4/9/37	Laborer
10/5/37	P. T. Mount	4/12/37	Carpenter
10/9/37	A. D. Thompson	12/8/36	Mucker
10/8/37	J. A. Jiminez	5/22/37	Laborer

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
/8/37	G. M. Loya	5/22/37	Laborer
/8/37	Gilbert Mendoza	7/15/36	Laborer
/8/37	F. L. Barcelo	6/5/37	Laborer
/8/37	M. Fimbres	4/16/37	Laborer
/8/37	J. C. Moreno	4/16/37	Laborer
/8/37	Jose Vasquez	5/1/37	Laborer
/8/37	F. V. Sanchez	4/13/36	Laborer
/8/37	C. A. Cota	7/14/37	Laborer
/8/37	S. E. Gonzales	8/21/37	Laborer
/8/37	W. J. Braman	5/7/37	Machinist
/8/37	W. E. Little	4/17/37	Machinist
/8/37	H. E. Chase	4/27/37	Machinist
/8/37	R. M. Collins	4/8/37	Boilermaker
/8/37	T. P. Blevins	5/12/37	Boilermaker
/8/37	W. R. Kumero	1/23/37	Boilermaker
/8/37	O. R. Harzman	3/24/37	Boilermaker
/8/37	Jesus Felix	5/22/37	Laborer
/9/37	Elbert Forrest	8/8/35	Vent. Man
/11/37	G. W. Phears	7/8/36	Mucker
/11/37	J. M. Graves	9/14/37	Mucker
/11/37	L. V. Reed	10/1/36	Electrician
/13/37	R. A. Cashell	11/7/36	Mucker
/12/37	George Wilson	5/13/37	Miner
/12/37	J. W. L. Evans	3/17/37	Miner
/13/37	H. M. Thomson	8/4/36	Miner
/15/37	A. J. Schwertner	9/22/36	Mucker
/15/37	H. M. Sessions	2/4/35	Mucker
/15/37	W. A. Floyd	3/2/36	Miner
/13/37	F. L. Sullivan	5/11/37	Miner
/15/37	I. G. Patrick	6/24/37	Mucker
/18/37	Pickett Hinton	8/12/37	Mucker
/18/37	H. C. Pendergraft	11/17/36	Miner
/18/37	J. J. Payne	10/17/36	Miner
/16/37	J. C. Williamson	6/3/37	Mucker
/16/37	S. F. Wickham	2/24/37	Miner
/20/37	W. B. Gingerich	9/9/37	Miner
/20/37	Pedro Fabio	4/23/37	Laborer
/20/37	Silvano Acevas	6/4/36	Laborer
/20/37	Lauro Avechuco	4/6/37	Laborer
/20/37	E. M. Chavez	12/4/36	Laborer
/20/37	Carlos Pena	12/4/36	Laborer
/20/37	D. G. Moreno	2/3/37	Laborer
/20/37	A. G. Romero	4/24/37	Laborer
/20/37	R. S. Lopez	6/4/36	Laborer
/20/37	Martin Hernandez	4/21/37	Laborer
/20/37	J. G. Benites	2/12/37	Laborer
/20/37	Crespin Domingues	9/25/36	Laborer
/20/37	Luis Sepulveda	7/10/37	Laborer
/20/37	Clemens Buscher	9/25/35	Truck Driver
/20/37	W. D. Collins	3/31/37	B. M. Helper
/21/37	R. S. Miller	5/4/37	Mucker
/21/37	L. A. Aaron	5/5/37	Miner
/21/37	J. I. Taylor	4/15/37	Miner
/21/37	W. E. Haygood	7/1/37	Miner

Tightly Bound

Exhibit B, Attachgd to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/21/37	Frank Gotch	5/2/36	Miner
10/21/37	C. R. Wynes	5/14/36	Mucker
10/21/37	J. A. Church	2/26/37	Miner
10/21/37	J. C. Jones	5/21/37	Mucker
10/21/37	A. R. Villa	5/29/37	Laborer
10/21/37	P. C. Llanez, Jr.	1/8/37	Laborer
10/22/37	M. Q. Riordan	9/2/36	Mucker
10/22/37	C. E. Clark	2/17/37	Miner
10/22/37	E. J. Delpaz	1/15/37	Miner
10/22/37	J. J. Holton	2/17/37	Mucker
10/22/37	R. M. Brooke	2/24/37	Mucker
10/22/37	J. A. Kuney	6/3/37	Miner
10/22/37	C. L. Duncan	10/29/36	Finlay Operator
10/22/37	A. J. Ricketts	4/8/37	Trackman
10/22/37	J. A. Joy	4/8/37	Miner
10/22/37	S. F. Gray	3/29/37	Mucker
10/22/37	G. W. Rong	3/31/37	Miner
10/22/37	H. E. Dodson	5/11/37	Mucker
10/22/37	R. V. Harris	2/15/37	Motorman
10/22/37	Edward Conley	6/22/37	Miner
10/22/37	A. G. Moore	9/9/37	Mucker
10/22/37	R. C. Herrell	8/25/37	Miner
10/23/37	B. L. Gamel	3/5/36	Mucker
10/23/37	C. D. Puckett	5/28/36	Miner
10/23/37	Ernest Stewart	3/29/37	Mucker
10/23/37	A. A. Torres	7/2/37	Craneman
10/23/37	L. B. Franks	4/7/37	Carpenter
10/25/37	E. W. Rogers	7/10/35	Motorman
10/25/37	C. W. McCollum	8/27/36	Miner
10/25/37	A. V. Barrett	5/7/36	Miner
10/25/37	H. C. Goodman	9/9/37	Mucker
10/25/37	Mack Pultz	6/4/37	Mucker
10/25/37	H. G. Houston	2/12/37	Mucker
10/25/37	B. J. Lemke	9/11/37	Mucker
10/25/37	A. F. Oglesby	6/18/37	Mucker
10/25/37	T. E. Schackleford	9/13/37	Mucker
10/25/37	J. H. Tate	9/16/37	Mucker
10/25/37	A. V. Musgrave	10/17/35	Mucker
10/25/37	A. R. Negri	4/7/37	B. S. Helper
10/25/37	R. G. MacGregor	8/14/37	Mucker
10/25/37	O. C. McMenamy	8/17/37	Mucker
10/25/37	J. R. Gafford	8/24/37	Mucker
10/25/37	J. R. Higdon	6/11/34	Pumpman
10/25/37	Juan Ramirez	3/22/37	Laborer
10/25/37	L. A. Valenzuela	5/1/37	Laborer
10/25/37	Elmer Smith	10/7/27	Mucker
10/25/37	Raymond Assmer	9/4/36	Laborer
10/26/37	E. W. Wagner	2/9/37	Mucker
10/26/37	P. M. Bartlett	9/14/37	Miner
10/26/37	G. E. Dickey	8/12/37	Miner
10/26/37	C. L. Mieyr	6/10/35	Pipe Helper
10/27/37	F. D. Bogenschutz	8/29/36	Miner
10/27/37	W. A. Andrews	6/1/37	Mucker
10/27/37	R. L. Smith	5/5/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	Name	Last Date Hired	Occupation When Leaving Service
/27/37	K. E. Grimm	7/14/37	Mucker
/27/37	Rex Loper	9/10/36	Mucker
/27/37	J. C. Wilson, Jr.	7/8/36	Mucker
/27/37	C. E. Jarnigan	6/4/37	Miner
/27/37	P. L. Pavlovich	6/10/37	Mucker
/27/37	O. B. Cook	10/17/36	Mucker
/27/37	A. A. Moss	5/19/37	Mucker
/27/37	S. C. McCahon	5/20/37	Miner
/27/37	D. O. Pendergraft	3/3/37	Mucker
/27/37	R. J. Gamel	7/10/35	Miner
/27/37	J. J. Raymond	7/22/37	Miner
/27/37	Pete Fenn	5/27/37	Miner
/27/37	P. J. Hunt	4/17/37	Miner
/27/37	N. G. Green	4/17/37	Miner
/27/37	E. M. Holbrook	2/15/37	Electrician
/27/37	Margaret Kitchell	3/13/31	Stenographer
/28/37	J. J. Cowling	11/25/35	Miner
/28/37	W. L. Sholly	8/3/37	Miner
/28/37	K. E. Wilson	8/12/37	Miner
/28/37	J. V. Betts	7/20/37	Mucker
/28/37	J. E. Petsche	6/9/37	Oiler
/28/37	I. B. Harper	12/7/36	Painter
/29/37	Germano Benedetti	2/4/37	Miner
/29/37	Russell Pyeatt	8/17/37	Mucker
/29/37	R. L. Hawkins	1/7/36	Miner
/29/37	W. R. Graham	1/20/36	Mucker
/29/37	S. C. McIntosh	4/30/36	Mucker
/29/37	J. W. Dye	6/1/37	Miner
/29/37	F. W. Younger	8/27/36	Mucker
/29/37	H. C. Ambrose	3/24/37	Mucker
/29/37	S. H. Stauss	3/8/37	Miner
/29/37	C. E. Whittle	9/1/37	Mucker
/29/37	T. W. McGarry	6/9/37	Miner
/29/37	W. A. Parkin	11/2/35	Mucker
/31/37	J. A. Peacock	4/2/37	Mucker
/31/37	E. V. Russell	9/2/37	Mucker
/31/37	G. E. Whitehead	9/2/37	Mucker
/31/37	W. T. Harris	6/2/37	Mucker
/31/37	J. C. Foster	5/5/37	Mucker
/31/37	C. C. Qualls	6/2/37	Mucker
/31/37	A. P. Baugh	9/2/37	Mucker
/31/37	R. L. Gilliam	5/6/37	Mucker
/31/37	F. G. White	4/13/37	Mucker
/31/37	K. C. Emory	9/2/37	Mucker
/31/37	W. C. Ogle	2/5/37	Miner
/31/37	T. I. Coffman	9/9/37	Mucker
/31/37	J. E. Jones	9/9/37	Mucker
/31/37	A. T. Holmberg	8/12/37	Miner
/31/37	J. C. Hedgecock	2/11/37	Guniteman
/31/37	G. L. Brown	4/15/37	Mucker
/31/37	W. B. Anderson	9/9/37	Mucker
/31/37	E. J. Jacobson	6/4/37	Miner
/31/37	B. F. Brown	1/15/37	Mucker
/31/37	C. A. Wittig	9/18/37	Mucker

Tightly Bound

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/31/37	H. B. Siria	9/18/37	Mucker
10/31/37	H. G. Hardt	9/18/37	Mucker
10/31/37	B. E. Roberts	2/13/37	Miner
10/31/37	B. E. Mayo	3/15/37	Motor Swamper
10/31/37	D. M. Spilsbury	8/19/37	Mucker
10/31/37	O. A. Mangum	5/11/37	Mucker
10/31/37	A. J. Olander	2/16/37	Mucker
10/31/37	W. C. Dippert	4/23/37	Mucker
10/37/37	A. N. Gafford	5/11/37	Mucker
10/31/37	H. F. Campbell	10/31/36	Miner
10/31/37	W. J. Smith	5/12/37	Mucker
10/31/37	C. J. D. Carroll	8/17/37	Mucker
10/31/37	W. A. Miller	5/14/37	Mucker
10/31/37	Glen O'Leary	1/4/37	Mucker
10/31/37	August Galigher	8/18/36	Miner
10/31/37	J. P. Spilsbury	1/7/37	Mucker
10/31/37	G. R. Martinez	2/7/37	Mucker
10/31/37	Amos West	8/24/37	Mucker
10/31/37	T. W. Brock	5/21/37	Mucker
10/31/37	Claude Tucker	1/13/37	Mucker
10/31/37	C. C. Yates	8/22/36	Mucker
10/31/37	F. L. Coons	1/13/37	Mucker
10/31/37	Milburn Meadows	3/24/37	Mucker
10/31/37	D. A. Herrington	5/8/37	Mucker
10/31/37	B. H. Cauley	3/1/37	Miner
10/31/37	W. D. Tyree	3/31/37	Mucker
10/31/37	R. S. Long	6/23/37	Mucker
10/31/37	C. M. Larson	6/24/37	Mucker
10/31/37	C. M. Thomas	8/31/37	Mucker
10/31/37	D. I. Gartin	9/2/37	Mucker
10/31/37	K. B. Howell	6/2/37	Mucker
10/31/37	A. A. Gray	2/4/37	Miner
10/31/37	T. A. Martin	5/5/37	Mucker
10/31/37	W. H. Davis	9/2/37	Mucker
10/31/37	H. A. Saarick	5/8/37	Mucker
10/31/37	Vernon Davis	5/14/37	Mucker
10/31/37	R. J. Brucks	3/5/37	Mucker
10/31/37	A. C. Linn	2/13/37	Miner
10/31/37	M. B. Judd	9/2/37	Mucker
10/31/37	J. E. Bruce	5/21/37	Mucker
10/31/37	R. E. Benton	9/16/37	Mucker
10/31/37	L. K. Farnsworth	8/24/37	Mucker
10/31/37	H. T. Puckett	9/18/37	Mucker
10/31/37	C. A. Van Troba	3/8/37	Miner
10/31/37	H. L. Lott	9/18/37	Mucker
10/31/37	W. W. Taylor	4/15/37	Mucker
10/31/37	W. T. Brunson	4/23/37	Mucker
10/31/37	A. M. Janzan	4/22/37	Mucker
10/31/37	James Doyle	9/18/37	Mucker
10/31/37	R. R. Howell	8/31/37	Mucker
10/31/37	E. R. Bowman	8/31/37	Mucker
10/31/37	J. L. Parnell	1/8/37	Mucker
10/31/37	J. G. Mitchum	1/30/37	Miner
10/31/37	W. E. Warren	4/27/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/31/37	W. W. Orton	4/23/37	Mucker
10/31/37	Floyd Winchester	4/28/37	Mucker
10/31/37	R. M. Adams	4/29/37	Mucker
10/31/37	A. C. Jean	9/17/36	Mucker
10/31/37	R. M. House	6/10/37	Mucker
10/31/37	William Rogers	3/15/37	Mucker
10/31/37	H. F. Williams	4/27/37	Mucker
10/31/37	R. R. Jones	5/1/37	Mucker
10/31/37	Roy Stone	3/5/37	Mucker
10/31/37	D. O. Jarvis	4/15/37	Mucker
10/31/37	J. C. Martineau	4/15/37	Mucker
10/31/37	A. J. Fowler	4/23/37	Mucker
10/31/37	Charlie McMenamy	4/28/37	Mucker
10/31/37	M. E. Mitchell	3/3/37	Miner
10/31/37	P. R. Cosgrove	1/27/37	Miner
10/31/37	A. E. Glasscock	3/27/37	Mucker
10/31/37	M. J. Brockman	5/7/37	Mucker
10/31/37	R. H. D'Albini	6/11/37	Mucker
10/31/37	S. J. Brockman	1/18/37	Miner
10/31/37	V. A. Orton	1/28/37	Miner
10/31/37	George Onufrock	1/28/37	Miner
10/31/37	J. H. Kridel	2/26/37	Miner
10/31/37	Harvey Medley	5/8/37	Miner
10/31/37	Carl Poole	5/19/37	Miner
10/31/37	E. H. Diffie	5/19/37	Mucker
10/31/37	J. R. Costey	5/20/37	Mucker
10/31/37	J. E. Blackwell	5/25/37	Mucker
10/31/37	W. G. Ashman	2/4/37	Miner
10/31/37	A. O. Orton	7/7/37	Mucker
10/31/37	S. W. Davis	9/9/37	Mucker
10/31/37	Florian Pilarczyk	2/4/37	Miner
10/31/37	Marion Turley	10/7/37	Mucker
10/31/37	Gordon Copeland	9/9/37	Mucker
10/31/37	W. H. Kizer	9/11/37	Mucker
10/31/37	M. G. Bloosevitch	7/14/37	Mucker
10/31/37	W. E. Moore	4/15/37	Mucker
10/31/37	F. J. Miller	3/10/37	Mucker
10/31/37	J. C. Harkins	9/14/37	Mucker
10/31/37	F. C. Bingham	10/7/37	Mucker
10/31/37	M. L. Ryan	10/7/37	Mucker
10/31/37	E. D. Wheeler	10/7/37	Mucker
10/31/37	D. D. Burnett	3/3/37	Mucker
10/31/37	L. E. Higgins	8/3/37	Miner
10/31/37	C. L. Davis	9/14/37	Miner
10/31/37	H. M. Bailey	3/27/37	Mucker
10/31/37	Harry Marks	9/11/37	Mucker
10/31/37	W. L. Dean	8/7/37	Miner
10/31/37	Alex. Balich	8/7/37	Mucker
10/31/37	J. W. Johnston	8/9/37	Mucker
10/31/37	W. H. McCahon	5/15/37	Miner
10/31/37	R. A. Bowers	4/17/37	Mucker
10/31/37	F. L. Shreves	6/4/37	Mucker
10/31/37	O. M. Farnsworth	8/17/37	Mucker
10/31/37	W. E. Miller	8/14/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/31/37	Van Lang	8/14/37	Mucker
10/31/37	P. M. Hunt	1/7/37	Mucker
10/31/37	J. W. Tidwell	6/4/37	Mucker
10/31/37	W. W. Gregg	1/11/37	Miner
10/31/37	J. R. Campbell	3/17/37	Mucker
10/31/37	J. D. Cooper	1/26/37	Miner
10/31/37	R. R. Langley	8/17/37	Mucker
10/31/37	F. J. Postles	9/16/37	Mucker
10/31/37	H. H. Grenwelge	9/21/37	Mucker
10/31/37	T. R. Bozarth	5/12/37	Mucker
10/31/37	A. C. Feller, Jr.	3/27/37	Mucker
10/31/37	J. F. Farnsworth	5/12/37	Mucker
10/31/37	G. L. Burden	4/22/37	Mucker
10/31/37	J. M. Tidmore	5/13/37	Mucker
10/31/37	O. M. Clarke, Jr.	3/31/37	Mucker
10/31/37	C. E. Younger	5/15/37	Mucker
10/31/37	Wilford Stokes	4/22/37	Mucker
10/31/37	J. H. Bricker, Jr.	5/19/37	Mucker
10/31/37	Barnie Turner	5/25/37	Mucker
10/31/37	Delma Fikes	5/27/37	Mucker
10/31/37	A. Q. Nations	6/11/37	Mucker
10/31/37	W. C. Slover	5/28/37	Mucker
10/31/37	O. D. Winkle	6/23/37	Mucker
10/31/37	F. W. Howell	6/24/37	Miner
10/31/37	J. B. Glenn, Jr.	6/25/37	Mucker
10/31/37	O. F. Satterfield	6/25/37	Mucker
10/31/37	J. A. Peccolo	8/19/37	Mucker
10/31/37	H. C. Davis	8/24/37	Mucker
10/31/37	C. L. Hicks	5/4/37	Mucker
10/31/37	W. A. Brady	2/15/37	Mucker
10/31/37	C. V. Jarrett	3/15/37	Mucker
10/31/37	D. G. Tyler	2/12/37	Mucker
10/31/37	Clifford Dean	4/21/37	Miner
10/31/37	E. W. Kelly	2/26/37	Mucker
10/31/37	Kenneth Crowder	3/19/37	Miner
10/31/37	W. E. White	9/11/37	Mucker
10/31/37	H. C. Boyles	5/19/37	Mucker
10/31/37	J. M. Modesett	5/29/37	Mucker
10/31/37	Peter Kerwin	6/11/37	Miner
10/31/37	D. E. Flanery	6/29/37	Miner
10/31/37	L. I. Gatlin	9/14/37	Mucker
10/31/37	George Barringer	9/16/37	Mucker
10/31/37	P. F. Keeler	7/22/37	Miner
10/31/37	H. H. Davis	8/5/37	Miner
10/31/37	Roy Skarl	9/21/37	Mucker
10/31/37	T. O. Imus	8/7/37	Mucker
10/31/37	E. A. White	9/21/37	Mucker
10/31/37	B. E. Kajohn	8/9/37	Mucker
10/31/37	L. W. Preston	9/21/37	Mucker
10/31/37	W. T. Hastie	8/12/37	Mucker
10/31/37	A. E. Farnsworth	8/14/37	Mucker
10/31/37	G. T. Kartchner	8/14/37	Mucker
10/31/37	G. E. Haynie	8/17/37	Mucker
10/31/37	M. T. Anderson	8/17/37	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
10/31/37	Paul Watkins	8/19/37	Mucker
10/31/37	M. S. Ross	8/21/37	Mucker
10/31/37	F. N. Reyes	7/14/37	Laborer
10/31/37	LaWayne Hussey	9/1/36	Mucker
10/31/37	M. F. Thompson	1/30/37	Mining Engineer
10/31/37	Wiley Stephens	9/15/37	Hosp. Orderly
10/31/37	Jewell Lee	8/12/37	Nurse
10/31/37	A. M. Cisneros	2/14/37	Laborer
10/31/37	Carmen Moreno	7/18/36	Laborer
10/31/37	C. P. Peters	4/5/37	Watchman
10/31/37	D. A. Quijada	7/31/37	Laborer
10/31/37	T. R. Ohton	7/31/37	Laborer
10/31/37	G. R. Hurtado	9/11/37	Laborer
10/31/37	F. F. Carbajal	9/18/37	Laborer
10/31/37	Max. Robledo	4/21/37	Laborer
10/31/37	R. O. Figueroa	7/31/37	Laborer
10/31/37	G. L. Weatherford	3/3/37	Mucker
10/31/37	J. E. Hodges	5/15/35	Mucker
10/31/37	R. E. Skates	5/14/37	Mucker
10/31/37	M. W. Bowman	8/9/36	Mucker
10/31/37	C. R. Stevens	10/26/35	Miner
10/31/37	C. F. Morrison	2/25/36	Mucker
10/31/37	S. L. Wright, Jr.	4/29/37	Mucker
10/31/37	L. O. Dahlgren	6/15/37	Mucker
10/31/37	Olof Wade	2/17/37	Trackman
10/31/37	E. P. White	9/4/35	Miner
10/31/37	F. R. Williams	9/9/35	Miner
10/31/37	F. A. Gray	5/5/35	Miner
10/31/37	V. D. Collum	3/3/37	Miner
10/31/37	B. E. Haygood	8/27/36	Mucker
10/31/37	Gurney Dunham	1/8/37	Mucker
11/2/37	G. S. Nelson	11/17/36	Mucker
11/3/37	C. G. Hughes	5/18/37	Miner
11/3/37	John Rooney	1/11/37	Miner
11/2/37	F. D. Long	7/7/37	B. S. Helper
11/1/37	R. A. Arquellez	9/18/37	Laborer
11/5/37	Roy Lynch	8/24/37	Miner
11/5/37	J. J. Phillips	5/6/37	Mucker
11/5/37	L. J. Bell	6/3/37	Miner
11/8/37	L. H. Green	5/11/27	Miner
11/8/37	A. J. Ricketts	10/22/37	Trackman
11/8/37	R. L. James	12/3/29	Mucker
11/8/37	J. D. Mahoney	1/8/37	Mucker
11/8/37	W. E. Taylor	10/19/36	Miner
11/8/37	G. E. Taylor	9/11/37	Miner
11/8/37	Wilford Stokes	4/22/37	Miner
11/9/37	J. V. Dye	2/26/36	Miner
11/12/37	M. J. Davis	8/12/37	Miner
11/10/37	E. F. Hagins	9/3/36	Miner
11/12/37	F. C. Shreves	4/16/36	Carpenter
11/13/37	Manuel Galaz	9/4/36	Laborer
11/12/37	Guadalupe Llanez	8/5/35	Laborer
11/15/37	E. F. Hamilton	12/4/29	Shift Boss
11/15/37	W. F. Doeltz	3/17/37	Draftsman

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
11/16/37	R. S. Miller	5/4/37	Mucker
11/16/37	C. L. Riley	3/11/36	Mucker
11/16/37	J. T. Kimbrough	2/20/34	Mucker
11/17/37	S. R. Jeffers	9/2/37	Mucker
11/17/37	W. L. Benton	5/7/37	Mucker
11/17/37	J. D. E. Dixon	1/8/37	Mucker
11/16/37	J. A. Hill	6/14/37	Mucker
11/20/37	W. L. Rickard	6/12/37	Mucker
11/20/37	S. J. Adams	1/18/37	Carpenter
11/19/37	F. A. Neal	9/16/37	B. S. Helper
11/22/37	N. C. Rodriquez	4/2/37	Laborer
11/22/37	Candelario Aguirre	4/4/35	Laborer
11/22/37	Ambrosio Sanchez	2/3/37	Laborer
11/22/37	M. Z. Jaramillo	7/10/37	Laborer
11/22/37	J. S. Castillo	7/10/37	Laborer
11/22/37	R. C. Martinez	2/7/37	Laborer
11/22/37	Mauricio Gil	4/16/37	Laborer
11/22/37	Juan Rivera	4/7/37	Laborer
11/22/37	J. A. Acuna	8/21/37	Laborer
11/22/37	Aristeo De Leon, Jr.	8/24/37	Laborer
11/20/37	J. R. Lewis	7/24/36	Boilermaker
11/24/37	John Paynich	8/4/36	Mucker
11/23/37	J. M. Bostick	4/27/37	Mucker
11/23/37	C. A. Raab	9/23/37	Mining Engineer
11/24/37	Laura Wohler	9/27/37	Maid
11/26/37	H. M. Goetz	5/4/36	Mucker
11/26/37	H. L. Williams	10/3/35	Mucker
11/30/37	J. R. Hall	8/19/37	Miner
11/30/37	Willis Diffie	5/21/36	Mucker
11/30/37	H. O. Bass	2/22/37	Miner
11/30/37	J. P. Sturdivant	1/3/36	Timberman
11/30/37	F. E. Kirby	6/13/35	Miner
11/30/37	W. M. Whitehill	1/18/37	Miner
11/30/37	J. H. Ronning	1/20/37	Mucker
11/30/37	C. L. Russell	1/9/36	Miner
11/30/37	Patrick Evans	3/1/37	Miner
11/30/37	I. L. Judd	6/12/35	Miner
11/30/37	R. N. Haynes	4/23/37	Laborer
11/30/37	H. A. House	6/10/37	Mucker
11/30/37	F. L. Hedrick	9/27/37	Janitor
11/30/37	Susan Boyle	9/23/37	Nurse
11/30/37	Margery Jordan	10/29/37	Nurse
11/30/37	J. M. Williams	3/25/35	Clerk
11/30/37	T. E. Tallant	4/1/37	Mucker
11/30/37	V. D. Collum	3/3/37	Miner
11/30/37	H. G. Wallis	1/8/37	Mucker
11/30/37	E. B. Brooks	1/8/37	Miner
11/30/37	T. B. Noland	8/29/36	Miner
11/30/37	A. F. Carter	3/24/37	Mucker
11/30/37	B. H. Barnette	6/24/37	Mucker
11/30/37	L. V. Trammell	10/1/35	Mucker
11/30/37	W. J. Ferrell	7/21/36	Mucker
11/30/37	Bart Oliver	4/22/37	Miner
11/30/37	M. L. Lynch	11/12/36	Miner
11/30/37	J. T. Verant	8/5/37	Miner
11/30/37	Arnulfo Aguirre	8/5/35	Laborer

Exhibit B, Attached to Stipulation.

Date Dropped from Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
11/30/37	V. R. Scheffler	8/20/36	Mucker
11/30/37	T. L. Henson	5/13/37	Mucker
11/30/37	K. N. Goodman	4/30/37	Mucker
12/3/37	L. E. Lillard	8/16/36	Finlay Operator
12/4/37	R. E. Pace	8/17/37	Miner
12/6/37	A. E. Hill	5/8/37	Mucker
12/4/37	J. H. Henderson	6/23/37	Miner
12/3/37	D. P. Faulconer	10/2/35	Miner
12/3/37	J. L. McDonald	8/12/36	Miner
12/8/37	R. W. Burns	10/1/36	Mucker
12/8/37	T. V. Miller	8/25/36	Mucker
12/8/37	T. J. Riggs	8/5/37	Mucker
12/8/37	W. J. Winiarski	11/16/35	Miner
12/8/37	G. A. Deshler	7/8/36	Miner
12/8/37	C. H. Lively	11/19/36	Miner
12/9/37	J. W. Tenney	4/6/37	Miner
12/8/37	B. H. Helms	3/19/37	Mucker
12/9/37	H. T. Bagley	10/3/36	Mucker
12/9/37	H. B. Kelley	5/8/36	Mucker
12/9/37	T. P. Bostick	12/18/36	Mucker
12/9/37	E. L. Nelson	3/24/37	Miner
12/8/37	O. T. Pfefferkorn	9/16/37	Mucker
12/8/37	L. S. Armstrong	6/24/37	Miner
12/8/37	L. V. Clark	6/11/35	Miner
12/8/37	Porfirio De Leon	12/30/36	Laborer
12/8/37	P. A. Gomez	7/10/37	Laborer
12/8/37	Rafael Sonoqui	9/23/36	Laborer
12/8/37	A. B. Teran	5/26/37	Laborer
12/8/37	August Hillman	4/23/37	Laborer
12/8/37	R. R. Wachs	4/15/37	Machinist
12/8/37	A. L. Rambo	3/29/37	Electrician
12/8/37	L. A. Colden	5/1/37	Electrician
12/10/37	J. L. Cleveland	10/3/36	Mucker
12/10/37	B. G. Taff	5/21/37	Mucker
12/10/37	Timothy Monohan	8/5/37	Miner
12/10/37	W. A. Day	9/28/36	Mucker
12/10/37	I. H. Miller	8/7/37	Mucker
12/10/37	T. A. Brady	4/30/37	Tinsmith
12/10/37	R. R. Wines	2/15/37	Truck Driver
12/10/37	D. B. Hogan, Jr.	5/2/36	Truck Driver
12/10/37	Earl Peterson	2/13/36	Handyman
12/10/37	O. H. Mathewson	1/3/37	B. M. Apprentice
12/10/37	W. E. Lisonbee	4/21/37	Welder
12/10/37	Harold Webster	10/15/36	Electrician
12/10/37	A. M. Mattingly	1/20/37	Electrician
12/10/37	J. S. Hughes	8/13/36	B. S. Helper
12/10/37	J. E. Greene	12/30/36	B. S. Helper
12/11/37	C. O. Martineau	9/13/36	Mucker
12/11/37	W. W. Lowrance	11/12/36	Tool Nipper
12/11/37	D. S. Craig	12/1/36	Miner
12/11/37	N. M. Benderach	9/3/36	Mucker
12/11/37	E. V. Evans	10/17/36	Miner
12/11/37	C. O. Blair	11/9/36	Miner
12/11/37	H. K. Spilsbury	12/30/36	Mucker
12/11/37	F. W. Oliver	9/9/36	Mucker
12/11/37	R. L. Williamson	11/10/36	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
12/11/37	C. P. Mansfield	4/27/37	Mucker
12/11/37	T. H. Voelker	1/11/36	Motorman
12/11/37	J. A. Windham	8/14/37	Trackman
12/11/37	U. T. Link	6/25/35	Motorman
12/11/37	C. A. Newsom	9/29/36	Motorman
12/11/37	F. E. Baumkirchner	5/18/37	Miner
12/11/37	E. J. King	6/22/37	Mucker
12/11/37	R. M. Cotten	8/19/37	Miner
12/11/37	T. S. Gough	3/3/37	Blacksmith
12/13/37	T. L. Herrington	10/8/36	Mucker
12/13/37	C. A. Saunders	9/22/36	Motorman
12/13/37	W. P. Stensgaard	9/21/36	Machinist
12/11/37	C. D. Davis	6/16/37	Machinist
12/11/37	W. A. Winchester	4/6/37	Watchman
12/15/37	Ralph Scott	11/12/36	Mucker
12/15/37	Harold Eldridge	4/12/37	Tool Nipper
12/14/37	S. O. Tanner	4/20/37	Miner
12/14/37	W. W. Walters	9/24/36	Pump Helper
12/14/37	C. L. Moore	3/31/37	Pipe Helper
12/15/37	W. J. Evans	18/5/37	Miner
12/15/37	Dr. W. R. Quinn	6/4/34	Physician
12/16/37	V. P. Kelly	10/29/36	Mucker
12/15/37	J. L. Brittain	2/15/36	Miner
12/16/37	W. H. Crossland	3/8/37	Mucker
12/20/37	Grant Wimberley	10/1/36	Mucker
12/20/37	J. F. Gray	12/15/35	Miner
12/20/37	C. W. Dean	8/24/37	Mucker
12/20/37	A. W. Knowles	1/3/36	Miner
12/20/37	D. W. Clayton	8/1/36	Mucker
12/20/37	Bill Trezise	9/10/36	B. M. Helper
12/22/37	R. R. Buckridge	4/12/37	Mucker
12/22/37	M. O. Evans	6/3/37	Mucker
12/22/37	L. C. North	10/8/36	Mucker
12/22/37	R. W. Halladay	9/3/36	Mucker
12/22/37	H. W. Long	6/11/36	Miner
12/22/37	J. T. Toland	8/20/35	Miner
12/22/37	J. N. Dodd	4/29/37	Mucker
12/22/37	W. N. Rafailovich	8/29/36	Mucker
12/22/37	J. M. Pilarczyk	10/29/36	Miner
12/22/37	R. J. McDonald	4/1/36	Mucker
12/22/37	C. E. Thur	5/31/37	Miner
12/22/37	P. W. Hanning	8/7/37	Miner
12/22/37	Loyde Johnson	9/9/36	Mucker
12/22/37	P. V. Hirales	3/29/37	Laborer
12/22/37	T. L. Townsend	7/28/36	Mucker
12/22/37	O. E. Lasater	6/26/35	B. M. Helper
12/27/37	F. V. Dunn	6/24/35	Miner
12/27/37	Willie Paken	4/7/36	Miner
12/27/37	F. M. Ochoa	1/8/37	Laborer
12/29/37	C. R. Fritz	1/4/37	Machinist Helper
12/29/37	J. W. Prescott	2/19/37	Pipe Helper
12/29/37	S. E. Lynn	1/1/30	Pipe Fitter
12/29/37	W. L. Mayo	5/7/37	Mucker
12/29/37	L. J. Combel	5/30/34	Watchman
12/30/37	G. T. Modesette	9/3/36	Miner
12/30/37	O. L. Newbury	9/9/36	Mucker
12/30/37	V. O. Hardt	8/11/36	Mucker

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
12/30/37	H. R. Fryke	8/29/36	Miner
12/30/37	C. T. Moore	8/17/37	Mucker
12/30/37	N. L. French	1/7/36	Finlay Operator
12/30/37	G. A. Rhodes	4/17/36	Mucker
12/30/37	R. L. Hoffman	3/12/36	Miner
12/30/37	H. M. June	5/9/36	Finlay Operator
12/30/37	D. L. Farnsworth	8/26/36	Mucker
12/30/37	H. B. Stewart	1/6/36	Miner
12/30/37	Gordon Davis	7/28/36	Mucker
12/30/37	E. V. Martin	4/21/36	Mucker
12/30/37	A. C. Melton	5/2/36	Miner
12/30/37	D. F. Keeler	4/16/36	Mucker
12/30/37	H. J. Tilton	8/18/36	Mucker
12/30/37	E. H. Walker	7/14/37	Mucker
12/30/37	E. W. Kelly	2/26/37	Miner
12/30/37	O. D. Haynie	6/22/37	Miner
12/30/37	E. G. Lopez	6/12/37	Laborer
12/30/37	Nick Sena	8/8/35	Laborer
12/30/37	Dionicio Moreno	12/30/36	Laborer
12/30/37	M. C. Martinez	12/4/36	Laborer
12/30/37	Francisco Lugo	9/22/36	Laborer
12/30/37	A. F. Ohton	12/30/36	Laborer
12/30/37	C. C. Brashear	2/22/37	Carpenter
12/30/37	J. D. Gilman	2/2/37	Carpenter
12/30/37	D. I. Stutzman	11/16/36	Welder
12/30/37	G. C. Veliz	3/29/37	Boilermaker
12/31/37	W. H. Phillips	8/20/36	Miner
12/31/37	R. E. Brandt	5/14/36	Mucker
12/31/37	A. P. Coons	5/13/36	Mucker
12/31/37	J. E. Werner	6/1/37	Mucker
12/31/37	D. H. Holt	10/8/36	Mucker
12/31/37	Lonnie Cloud	1/7/36	Miner
12/31/37	Ike Gorman	12/30/36	Mucker
12/31/37	Andreas de Leon	4/13/36	Laborer
12/31/37	M. S. Best	9/14/37	Painter
12/31/37	R. P. Pettijohn	5/31/35	Mucker
12/31/37	George Sandich	11/4/36	Watchman
12/31/37	F. J. Wojcik	4/5/37	Watchman
12/31/37	W. A. White, Jr.	1/13/36	Clerk
12/31/37	A. B. McClure	6/6/37	Hotel Porter
12/31/37	Edna Murphy	12/25/37	Nurse
12/31/37	R. J. Wish	7/30/36	Mucker
12/31/37	J. D. Williams	5/8/37	Trammer
12/31/37	Raymond James	3/5/36	Motor Swamper
12/31/37	C. H. Johnston	6/21/37	Miner
12/31/37	H. G. Harris	9/24/36	Finlay Operator
12/31/37	T. I. Phillips	8/29/36	Motor Swamper
12/31/37	J. H. Jett	4/21/36	Miner
12/31/37	Tom Lease	8/16/36	Miner
12/31/37	F. E. Roberson	8/4/36	Mucker
12/31/37	J. E. Jones	11/1/37	Miner
12/31/37	E. A. McDougall	2/26/37	Mucker
12/31/37	J. T. Wilson	4/18/36	Mucker
12/31/37	E. R. Martinez	4/16/37	Finlay Operator
12/31/37	P. R. Brown	5/9/36	Mucker
12/31/37	C. W. Weathers	7/22/37	Miner
12/31/37	W. C. Hobgood	2/16/36	Mucker

Tightly Bound

Exhibit B, Attached to Stipulation.

Date Dropped From Payroll	*Name*	*Last Date Hired*	*Occupation When Leaving Service*
12/31/37	Edward Johnson	4/28/36	Mucker
12/31/37	A. E. Dunham	1/11/36	Miner
12/31/37	R. D. Haynie	6/10/35	Miner
12/31/37	Arden Rickard	9/1/36	Mucker
12/31/37	M. J. Cowan	12/29/36	Miner
12/31/37	Charles Brandon	9/1/36	Miner
12/31/37	Gilberto Chavez	9/4/36	Laborer
12/31/37	J. M. Valenzuela	7/24/36	Laborer
12/31/37	P. C. Llanez, Jr.	12/21/37	Laborer
12/31/37	J. P. Chavez	6/4/36	Laborer
12/31/37	J. S. Guillen	12/30/36	Laborer
12/31/37	Cisto Salazar	4/16/37	Laborer
12/31/37	Blas Urbina	4/23/37	Laborer
12/31/37	C. D. Sheldon	8/4/36	Mucker
12/31/37	R. D. Barron	2/4/37	Mucker
12/31/37	G. C. Gillaspy	1/1/37	Pumpman
12/31/37	L. J. Larsen	6/15/16	Blacksmith
12/31/37	D. C. Barnard	9/10/34	Assayer
12/31/37	Carmen Coronado	9/4/36	Laborer
1/1/38	Everett Duncan	1/30/37	Miner
1/3/38	J. M. Dobler	12/16/36	Miner
1/5/38	T. J. White	3/31/37	Pipefitter
1/7/38	R. M. Orner	3/5/37	Miner
1/7/38	Clifford Peterson	9/14/37	Mucker
1/7/38	K. D. McPherson	10/31/36	Carp. Apprentice
1/7/38	J. C. Hutchison, Jr.	3/19/37	Painter Helper
1/7/38	P. L. Keller	4/16/36	Electrician
1/10/38	William Todd, Jr.	8/4/36	Mucker
1/10/38	W. N. Meador	5/5/37	Mucker
1/12/38	Paul Criss	5/7/36	Mucker
1/15/38	W. G. Smith	1/3/36	Mucker
1/15/38	L. G. Rex	5/11/37	Mucker
1/18/38	G. Y. Valenzuela	2/3/37	Laborer
1/17/38	J. P. Llanez	10/16/31	Laborer
1/17/38	J. B. Dannelley	6/9/36	Miner
1/18/38	Gordon Hodges	6/23/37	Mucker
1/27/38	E C. Hibble	8/18/36	Mucker
1/27/38	E. L. Watkins	6/11/35	Mucker
1/25/38	C. R. Gandy	4/18/36	Miner
1/27/38	L. L. Pruett	1/11/37	Mucker
1/27/38	Eric Wahlgren	12/8/33	Miner
1/27/38	R. D. Williamson	9/17/36	Mucker
1/22/38	L. H. Tenney	5/27/37	Mucker
1/27/38	J. H. Townsend	6/25/37	Mucker
1/27/38	Steve Kroh	4/25/36	Miner
1/27/38	L. C. McKnight	9/9/37	Miner
1/27/38	H. T. Peterson	12/1/36	Miner
1/27/38	J. M. Atkins	10/31/36	Miner
1/27/38	M. B. McLaughlin	4/22/37	Mucker
1/25/38	M. H. Childress	7/1/35	Miner
1/24/38	G. M. Harkelson	12/4/35	Painter Helper
1/27/38	N. M. Acosta	1/24/22	Laborer
1/27/38	W. K. Bell	6/10/35	Miner
1/7/38	Mrs. Hilda Andrews	1/4/38	Nurse
1/16/38	Georgia B. Hayes	9/17/37	Maid

Total number leaving service 1891

UNITED STATES OF AMERICA,
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL NO. 30.	CASE No. XXI-C-266

Consent.

Now comes the INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL No. 30, and consents to the inclusion into the record in the above proceedings, the Stipulation heretofore entered into by and between William R. Walsh, Attorney for the National Labor Relations Board, and Ellinwood & Ross and Denison Kitchel, attorneys for the Respondent, dated January 11, 1939.

Dated: January 31, 1939.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL No. 30

By /s/ JOHN P. FOLEY
President

Letter, Dated June 16, 1939.

JUNE 16, 1939

Re: PHELPS DODGE CORPORATION
Case No. C-500

DEAR SIRS:

At the oral argument upon exceptions to the Trial Examiner's Intermediate Report in the above proceeding, former Board member Donald Wakefield Smith was one of two members of the Board who heard the argument. Since Donald Wakefield Smith is no longer a member of the Board, the case will be decided by members of the Board, at least one of whom was not present at the oral argument. The Board, pursuant to Article II, Section 38(d), of National Labor Relations Board Rules and Regulations—Series 1, as amended, accordingly has directed me to notify you of the opportunity of requesting further oral argument if desired. Such request should be filed within ten days from the receipt of this letter.

Very truly yours,

NATHAN WITT
Secretary

Letter, Dated June 23, 1939.

LAW OFFICES OF
ELLINWOOD & ROSS
8TH FLOOR TITLE & TRUST BUILDING
Phoenix, Arizona

JUNE 23, 1939.

MR. NATHAN WITT, Secretary,
NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

Re: PHELPS DODGE CORPORATION Case No. C-500

DEAR SIR:

Your letter of June 16, 1939, regarding the above case was received in this office on June 20, 1939.

In view of the change in the membership of the Board, we respectfully request the opportunity of presenting further oral argument in this case.

Yours very truly,

ELLINWOOD & ROSS
by (signed) WILLIAM A. EVANS

WAE:H
Registered—R.R.R.

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL, & SMELTER WORKERS, LOCAL NO. 30.	CASE No. C-500

Notice of Hearing.

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, July 11, 1939 at 2:00 p. m. or as soon thereafter as the Board may hear you, in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Dated, Washington, D. C., June 29, 1939.

NATHAN WITT

NATHAN WITT
Secretary

[SEAL.]

Telegram From Denison Kitchel to J. Warren Madden.

WESTERN UNION

NB45 1 110 NL-VN Bronxville NY 29

J WARREN MADDEN, CHAIRMAN NATIONAL LABOR RELATIONS BOARD—SHOREHAM BLDG WASHDC—

Have just sent following wire to Secretary Witt quote re Pehlps Dodge Case Number C-500 have just received telegraphic advice from my office in Phonix Ariz of July 11 date for further oral argument as I will make appearance for respondent and have just undergone appendicitis operation in local hospital here would greatly appreciate if argument could be reset for July 20th 25th or 27th any one of these dates would be satisfactory and would immediately precede my return to Arizona following period of recuperation kindly advise by wire to undersigned at 33 Valley Road Bronxville NY unquote under these circumstances would certainly appreciate Board granting this request regards—

DENISON KITCHEL.

C-500 20 25 27 33.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL, & SMELTER WORKERS, LOCAL NO. 30.	CASE No. C-500

Notice of Postponement of Hearing.

PLEASE TAKE NOTICE that the hearing for the purpose of oral argument previously scheduled in this matter for Tuesday, July 11, 1939, at 2:00 p. m., in Room 326, Shoreham Building, Fifteenth and H. Streets, N. W., Washington, D. C., is hereby postponed to Thursday, July 20, 1939, at 10:00 a. m. or as soon thereafter as the Board may hear you, at the same place.

Dated, Washington, D. C., June 30, 1939.

By direction of the Board:

NATHAN WITT

NATHAN WITT
Secretary

[SEAL.]

Telegram, Dated June 30, 1939.

TELEGRAM

Official Business—Government Rates

JUNE 30, 1939

PHELPS DODGE CORPORATION
BISBEE, ARIZONA

ELLINWOOD & ROSS
807 TITLE & TRUST BLDG.
PHOENIX, ARIZONA

INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS, LOCAL NO. 30
c/o JOHN P. FOLEY
BOX 3336
LOWELL, ARIZONA

DENISON KITCHEL
33 VALLEY ROAD
BRONXVILLE, NEW YORK

TOWNE J. NYLANDER, DIRECTOR 21ST REGION
NATIONAL LABOR RELATIONS BOARD
808 U. S. POST OFFICE & COURT HOUSE
SPRING & TEMPLE STREETS
LOS ANGELES, CALIFORNIA

Re PHELPS DODGE CORPORATION, Case C-500. Further oral argument postponed to July 20.

NATHAN WITT, Secretary
NATIONAL LABOR RELATIONS BOARD

Appearances at Hearing.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30.	CASE No. C-500

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of ORAL ARGUMENT at the above place on July 20, 1939 at 10:00 a. m.

BEFORE:

J. Warren Madden, Chairman
Edwin S. Smith, Member
William M. Leiserson, Member

APPEARANCES:

Henry Fox, of Counsel to the Board

For the Company:
Denison Kitchel
807 Title Trust Building, Phoenix, Arizona

For the Union:

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF PHELPS DODGE CORPORATION, a corporation *and* INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL NO. 30.	CASE No. C-500

File in Informal File J

MR. DAVID PERSINGER, for the Board.

ELLINWOOD & ROSS by MR. DENNISON KITCHEL and MR. WILLIAM A. EVANS, of Phoenix, Ariz., for the respondent.

MR. HENRY J. FOX, of counsel to the Board.

Decision and Order.

STATEMENT OF THE CASE.

Upon charges and amended charges duly filed on June 7, 1937, and December 30, 1937, respectively, by the International Union of Mine, Mill and Smelter Workers, Local No. 30, herein called the Union, the National Labor Relations Board, herein called the Board, by Towne J. Nylander, Regional Director for the Twenty-first Region (Los Angeles, California), issued and duly served its complaint dated January 10, 1938, against Phelps Dodge Corporation, New York City, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the mean-

ing of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint, in substance, alleged that: (1) by its refusal to reinstate certain specified individuals employed at its Copper Queen Mine, Bisbee, Arizona, because they had joined and assisted the Union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, the respondent did discriminate and is discriminating in regard to their hire and tenure of employment and did thus discourage and is thus discouraging membership in the Union; and (2) by its failure to reinstate said individuals, the respondent did interfere with, restrain, and coerce its employees and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer, dated January 20, 1938, admitting in part and denying in part the allegations of the complaint concerning its business,[1] denying that the alleged unfair labor practices affect commerce, and further denying that it had engaged in or was engaging in the alleged unfair labor practices.

On January 10, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the respondent, the Union, and the Employees' Association.

Pursuant to notice, a hearing was held in Bisbee, Arizona, from January 27 through February 3, 1938, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board and the respondent appeared by counsel and participated in the hearing. Officials and members of the Union were present and testified, but otherwise the Union did not participate in the hearing. Full opportunity to be heard, to examine and cross-examine

(1) See Section I, *infra*.

witnesses, and to introduce evidence bearing on the issues was afforded to all parties. During the course of the hearing, by stipulation between counsel for the Board and the respondent, the complaint and charge were amended by the addition of one name. Upon motion of counsel for the Board, corrections were made in the names listed in the complaint.

At the commencement of the hearing the counsel for the respondent filed six written motions to dismiss the complaint on the ground that it was insufficient. The Trial Examiner severally denied them. The rulings in respect thereto are affirmed. At the close of the Board's case and again at the conclusion of the taking of testimony, the respondent made nine different motions to dismiss the complaint as to various individuals and in its entirety. The Trial Examiner denied these motions. We affirm his rulings only so far as they are consistent with the findings, conclusions, and order, hereinafter set forth.[2]

Upon motion of counsel for the Board, the Trial Examiner dismissed the complaint as to Bert Bethel, T. N. Curtis, and John J. McKelvey. At the conclusion of the hearing, upon motion of counsel for the respondent, with acquiescence of counsel for the Board, the Trial Examiner dismissed the complaint as to Earl Worden. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence besides those already considered. The Board has reviewed all these rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 16, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommended

(2) The Trial Examiner subsequently recommended the dismissal of the complaint as to certain of the individuals included in these motions.

that the respondent be required to cease and desist from such practices and to offer reinstatement with back pay to 38 persons and back pay alone to 7 persons found to have been discriminatorily refused reinstatement. On April 2, 1938, the respondent's exceptions to the Intermediate Report and to various rulings of the Trial Examiner, were docketed.

On April 1, 1938, the respondent requested permission to file a brief and for oral argument. Pursuant to notice, a hearing was held before the Board on May 5, 1938, and July 20, 1939, in Washington, D. C., for the purpose of such oral argument. In each instance the respondent was represented by counsel but the Union did not appear.

On January 11, 1939, counsel for the Board and counsel for the respondent, with the consent of the Union, entered into a stipulation relating to certain pay-roll data. The stipulation is hereby made part of the record.

The Board has considered the exceptions to the Intermediate Report and the brief filed by the respondent and, save as consistent with the findings, conclusions, and order hereinafter set forth, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Finding of Fact

I. The business of the respondent[3]

Phelps Dodge Corporation is a New York corporation with its principal office in New York City. The business of the respondent and its subsidiaries comprises operations in the copper industry, which include mining, milling, smelting, refining, and fabricating. Gold and silver are also recovered from the respondent's ores. In addition to marketing copper in refinery shapes, copper and copper

(3) Most of the facts in this section are derived from stipulations between counsel and the Registration Statement, signed May 24, 1937, filed by the respondent with the Securities and Exchange Commission.

alloys are also marketed in the form of products fabricated by a subsidiary.

The respondent conducts its copper mining operations at Bisbee, Jerome, Ajo, and Morenci, all in Arizona.[4] It operates smelting plants at Douglas, Clarkdale, and Clifton, Arizona. A wholly owned subsidiary of the respondent, Nichols Copper Company, engages in both smelting and refining at Laurel Hill, New York City, and in refining at El Paso, Texas. In addition to refining the respondent's production, the Nichols Copper Company carries on a custom business, including both purchase and treatment of ores, blister, and scrap.

Another wholly owned subsidiary of the respondent, Phelps Dodge Copper Products Corporation, operates fabricating and manufacturing plants located at Bayway, New Jersey; Fort Wayne, Indiana; Yonkers, New York; and Los Angeles, California. Products of these plants include a great variety of copper and copper alloy manufactures. Other activities of the respondent and its subsidiaries include the operation of a coal mine at Dawson, New Mexico, a railroad between Jerome and Clarkdale, Arizona, and the operation and maintenance of general merchandise stores and other services in the localities in which its mining properties are situated.[5]

The proceedings in this case are concerned only with the respondent's Copper Queen Branch, Mines Division, situated in the Warren Mining District at Bisbee, Arizona.

In 1936 the Copper Queen Branch, Mines Division, hereafter referred to as the Mines Division, produced 795,946 dry tons of ore. Of this, 785,061 tons of copper smelting

(4) The Moctezuma Copper Company and the Compania Minera de San Carlos, S. A., both in Mexico, are mining companies owned by the respondent.

(5) Among these subsidiaries are the following utilities: Ajo Improvement Company, Warren Company, The Morenci Water Company, and Upper Verde Public Utilities Company, all doing business in Arizona; Mercantile corporations: Phelps Dodge Mercantile Company, doing business in New Mexico and Arizona, and New Cornelia Cooperative Mercantile Company, doing business in Arizona; and the Cochise Publishing Company, Bisbee, Arizona.

ore were shipped to the smelter of the Copper Queen Branch, Smelter Division, located at Douglas, Arizona; 10,453 tons of basic sulphide ore were shipped to the smelter of the American Smelting and Refining Company situated in El Paso, Texas; and 432 tons of silver-lead ore were shipped to the refinery of the Nichols Copper Company, also located in El Paso, Texas. Of the 967,249 dry tons of ore produced by the Mines Division in 1937, 200 tons of silver-lead ore were sent to the Nichols Copper Company Refinery at El Paso, Texas, while the rest was sent to the smelter at Douglas, Arizona.

In the course of its operations at the Mines Division in 1936, the respondent used 593,347,000 cubic feet of natural gas, purchased from the El Paso Natural Gas Company and transported by pipe line from the State of New Mexico. In 1937 it obtained 698,959,000 cubic feet of natural gas from the same source. There were shipped in from outside of Arizona 22,841 and 37,177 barrels of fuel oil in 1936 and 1937, respectively, for use in the operations of the Mines Division.

On June 7, 1935, there was a total of 941 men on the Mines Division pay roll, while on January 1, 1938, there was a total of 1,414 employees.

All of the ore produced at the Mines Division ultimately finds its way into interstate commerce. The basic sulphide ore and the silver-lead ore, constituting about 1 per cent of the ore mined by the Division, are shipped directly in interstate commerce to smelters and refineries at El Paso, Texas. The remaining ore produced by the Mines Division is sent first to the respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona. Ores are also received at this smelter from mining companies, owned by the respondent, located at Morenci and Ajo, Arizona, and in Mexico. The entire output of the Douglas Smelter is transported in interstate commerce to the refinery of the respondent's wholly owned subsidiary, Nichols Copper Company, at

El Paso, Texas, where it is converted into various copper and copper alloy products. Thus, although the ore produced by the Mines Division may lose its identity, the record clearly establishes that it all moves in interstate commerce. The products of the El Paso refinery are shipped to the various branches of the Phelps Dodge Copper Products Corporation, located in New York, New Jersey, Indiana, and California, as well as to other purchasers. At the various branches of the Phelps Dodge Copper Products Corporation, the copper, together with that shipped in from the refinery of the Nichols Copper Company located at Laurel Hill, New York, is manufactured into a large variety of products which are then sold, distributed, and shipped in interstate commerce. During the course of the conversion of the ore into copper products at the smelter and refinery, it is mingled with other ores and treated with substances which have been shipped in interstate commerce.

II. The Organization Involved

International Union of Mine, Mill and Smelter Workers, Local No. 30, is a labor organization affiliated with the Committee for Industrial Organization,[6] admitting to membership employees of the respondent.

III. The Unfair Labor Practices

A. *Background of the unfair labor practices*

In 1933 the Union was organized at Bisbee, Arizona, and secured some membership among the employees at the respondent's Copper Queen branch. On about June 1, 1935, most of the union men were working in one section of the mine known as the Cole shaft, where they had been segregated by the respondent. The respondent denied the fact of segregation, but it is evidenced incontrovertibly by the first paragraph of a letter dated June 10, 1935, from

(6) Now Congress of Industrial Organizations.

P. G. Beckett, vice president and general manager in Bisbee, to Louis S. Cates, president of the corporation, located in New York City. The letter states, "Last week at Bisbee the Mine Department sent over to the Cole Shaft four or five non-union men to fill vacancies in that mine. As you know, the personnel of the Cole Mine is largely union, as we have tried to segregate the union men there."

On about June 1, 1935, eight non-union men were transferred to work in the Cole shaft. Friction developed between the union and non-union workers. Thereupon, several union members pursued a course of conduct which endangered the comfort and, to some extent, the safety of the non-union men. The latter made complaints to the management concerning the conduct of the union men. The management investigated the complaints and on June 6, 1935, discharged eight union members working in the Cole shaft.[7] These discharges, which occurred prior to July 5, 1935, the effective date of the Act, are not in issue under the pleadings, and we make no findings with respect to them.

On June 7, the day following the discharges, the union officers called a meeting to advise the members of the discharges and to determine the Union's course of action. The consensus of opinion at this meeting, as described by William Day, one of the eight discharged union employees, was

> That the time had come that something had to be done immediately. We couldn't stand for this slaughter. . . . They are canning men in groups, and it was a matter of a very few days until all union men would go in the same manner.

The meeting closed with a virtually unanimous vote in favor of a strike to be effective from the following Monday morning, June 10.

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(7) The following individuals included in the complaint as allegedly having been subsequently discriminatorily refused employment by the respondent were among these eight: William M. Day and Levi Crandall.

On June 10, 1935, the strike commenced and a picket line was formed. A number of union members and sympathetic non-union men, constituting somewhat less than 10 per cent of the respondent's 950 employees, went out on strike. The mine was not closed but continued to operate on a curtailed basis for several weeks until it resumed normal operations. By June 28, 1935, all the strikers' jobs had been filled.[8]

On August 9, 1935, the Union made an application for the reinstatement of the strikers and the men discharged on June 6, 1935. On this occasion, the respondent refused to reinstate any of the strikers on the ground that their jobs had been filled. On August 23, 1935, a similar request was made by representatives of the Union and a similar reply was given by the respondent.[9]

On August 24, 1935, the Union officially terminated the strike, and the picket line disbanded. In the period from August 24, 1935, until the date of the hearing, a number of the strikers made individual applications for reinstatement, but none of them was reinstated.

B. *Refusals to reinstate*

The record establishes beyond question that the respondent was actively opposed to the Union from a period antedating the strike. Counsel for the respondent and counsel for the Board stipulated *inter alia* and we find ". . . that just prior to and during the progress of the strike, respondent corporation had the Local under surveillance, but . . . that that surveillance was discontinued a few months after the strike was concluded and has not been recontinued at any time since."

(8) Murray A. Bateman, the respondent's employment manager, testified that within the first week after the strike commenced a few of the strikers abandoned the strike and returned to work. However, he named only Owen Western. The respondent does not contend that any of the other strikers were ever reinstated.

(9) That these requests were considered by the respondent to be applications for reinstatement of the strikers is admitted by the respondent in its brief wherein it states that the requests were refused because "their jobs had been filled."

By virtue of its espionage, immediately prior to the strike, the respondent was enabled to prepare for it. After gauging the probable effectiveness of the strike the respondent determined to resist any effort at settlement and to use the opportunity it afforded to eliminate permanently the Union from its plant. On June 10, 1935, the day the strike began, P. G. Beckett, the respondent's vice president and general manager at Bisbee, Arizona, wrote Louis S. Cates, the respondent's president in New York City, a letter which states in part:

> I am sorry, of course, that this thing [strike] has come about, but, honestly, I feel that it had to come sometime and our union friends are so deplorably weak at the present time that it might just as well come now as later. For some time their feeling has been that they might just as well try and pull a strike as continue to lose out in the way they have been doing and finally get sunk without making a little "play" first.
>
> It is never wise, of course, to under-estimate these things, but at the present writing it does not look very serious. I presume the next move will be that the union men will holler for help from somebody and want arbitration, which we shall decline.

Murray A. Bateman, the respondent's employment manager who had full authority over the employment of workers subject only to general policy instructions issued by his superiors, testified, and we find, that about a week after the commencement of the strike he was instructed by Captain Hodgson, manager of the mines, to "go slow" on reinstating any of the individuals who had gone on strike and who had appeared on the picket line. Bateman further stated that this instruction was never altered.

On August 6, 1935, a few days prior to the Union's unsuccessful effort on August 9, 1935, to obtain reinstatement

of the strikers, P. G. Beckett again wrote a letter to Louis S. Cates. The second paragraph reads:

> The State Federation of Labor people had a meeting in Tucson the other day, as per the enclosed clipping. I understand that a Federation committee of local people, some of them Douglas boys, has been appointed to see the management and find out if they can act as conciliators, etc. They will, of course, be told that there is no way that they can help.

Evidence of what occurred at the conference of August 9, 1935, is contained in a comprehensive memorandum, dated August 10, 1935, written by H. C. Henrie, assistant manager, to P. G. Beckett. Henrie reported, *inter alia*, that "Mr. Barkdoll advised the committee that it would be impossible to reinstate these men who had quit the service of the Company. Their jobs had been filled and the present working force would not stand for their being reinstated." Henrie further disclosed that later in the meeting, "We again advised the committee that the men who had quit could not be reinstated."

As we have already indicated, on August 23, 1935, a group application for reinstatement of the strikers was again made by the Union. The discussions which took place are described in a memorandum dated August 24, 1935, written by H. C. Henrie, who represented the respondent at the conference, to P. G. Beckett.

In his memorandum covering the conference of August 23, 1935, Henri relates, *inter alia:*

> Mr. Potter[10] then inquired what the Company could do to settle the present trouble, and stated that if the men who still remained in the District were put back to work the strike could be settled.

(10) William Day, Dave Lytle, and A. B. Potter represented the Union.

I advised the Committee that two conferences had been held on this matter. . . . The position of the Company as outlined in the two former conferences had not changed, and there was nothing new to add on the subject.

The news of the termination of the strike on August 24, 1935, was announced to Beckett in the form of a postscript attached to Henrie's memorandum of the same date.[11] The postscript reads as follows:

August 26, 1935.

The Bisbee Miners' Union on Saturday, August 24th, voted to terminate the present strike.

The vote, which was by secret ballot, resulted in thirty votes for terminating the strike and ten votes for continuing.

We may experience a little difficulty from some of the men who will seek reinstatement, since I am advised that the Officers of the Union told their members at Saturday night's meeting that many of them would be re-employed by the Company.

The local Union has advised the International Officers that the strike has been terminated.

Other evidence of the respondent's studied discrimination against the strikers is found in the notations regarding their strike activities made by the respondent on their individual employment cards. These notations were typewritten upon the employment records of all excepting a few of the individuals involved in the complaint. In over 25 cases

(11) The evidence concerning espionage was developed at the hearing when Henrie was confronted with this memorandum as well as certain telegrams dated August 25, 1935, announcing the cessation of the strike.

there is a notation to the effect that the employee appeared on the picket line. A few samples of the notations follow:[12]

> Walked out when strike was called—Whole family also—Was on picket line all during strike—Arrested for beating up Larry Kuder.
>
> Walked out when strike was called and picketed, as well did his wife.
>
> Walked out when strike was called—Was on picket line as well was his wife and mother.
>
> Walked out when strike was called—with all the rest of the family—Was on picket line through strike.
>
> Did not report for work when strike was called—bad actor on picket line.
>
> Walked out when strike was called and he and wife picketed all during strike.

Bateman, the employment manager, explained that he noted the employees' appearance on the picket line solely for the purpose of dropping them from the pay roll. The notations on the cards recorded above controvert this explanation since the ascertainment of the fact that the striker had left his employment did not require the detailed notations of the individual's and his family's strike activity as recorded above. We find that the respondent compiled a permanent record of the strike activities of its employees and utilized it as a "blacklist" in excluding the strikers from its employ.

The record is replete with anti-union statements attributed by applicants to Bateman. According to the applicants, in these conversations, Bateman assigned their concerted strike activity as the reason for denying them reinstatement. We shall describe only some of the conversations.

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(12) They appeared on the respective employment cards of Grover D. Windsor, Clyde Bigelow, William Henry Bigelow, William H. Windsor, William Edward Sharp, and H. D. Edge.

Montague Reed, one of the strikers, testified as follows: During the course of the strike, on June 21, while calling for his pay check, he encountered Bateman who inquired whether he had removed his clothes from the locker room. Reed responded, "No, I haven't. The strike isn't over yet and I haven't moved them." Bateman thereupon advised Reed, "Well, we want you to clean them out because as far as you fellows are concerned the strike is never going to be ended for you." Bateman admitted that he requested Reed to empty his locker but denied making any remarks relative to the strike.

Jesse Edge, a striker, testified to the following effect: He called for his pay slip in Bateman's office on about June 22, 1935. Upon this occasion Bateman asked him why he did not return to work. When Edge responded that he "was out on strike," Bateman informed him that if he did not go back he would never work for the company again. This conversation was not denied by Bateman other than by its inclusion under Bateman's general denial that he never made any statements to strikers pertaining to the Union or the strike.

William Day testified to the effect that by August 21, 1935, the Union realized that it was doomed to defeat and sought to put the men back to work. Early on that morning, according to Day, about 25 or 30 pickets gathered behind a similar sized group of applicants at the employment office. The following excerpts from the record describe Day's version of what then transpired:

> Q. And Mr. Bateman, you say, came out onto the platform and said what? A. He said, "Is there any miners here?"
>
> Q. Did anyone reply? A. I was the first man that spoke up. I says, "Yes, quite a bunch of us. How about a job?" He says, "Nothing doing." Irving Caldwell was standing by the side of me. He was a miner; he was a striker. He says, "What about

my job?" And from that it was repeated on up. They was kind of in a line on the outside of the young kids there. We call them "rustlers."

Q. In other words, the crowd was of two groups: The rustlers close to the porch, and the pickets behind them away from the porch? A. The pickets were on the outside of the crowd that come up there to rustle.

Q. I see. A. What you might say, in the same group. However, they were closest.

Q. And others called out, "What about my job?" A. A good many others called and says, "What about my job?" It was repeated right on around.

Q. Did Mr. Bateman make any reply? A. He says,—shook his head. He says, "There's nothing doing." He says, "You fellows will never work for the Phelps Dodge Company again." I says, "Wait a minute! Now, just who do you refer to as "You fellows?" He turns back to me and he says, "You strikers."

Q. Was anything further said? A. Yes. I said, "Well, you must have told I. V. Pruitt (sheriff of Cochise County) that. He has informed two or three times the boys that we could never go to work again."

Q. Did Mr. Bateman make any reply? A. He said, "I never told Pruitt that, but," he says, "I'm telling you," just in about that tone of voice.

That portion of Day's testimony which attributes to Bateman the statement that the strikers would never work for the respondent again was corroborated by the testimony of four other witnesses, all strikers, who were present on that occasion. On the other hand Bateman's denial finds some support in the testimony of W. H. Crane, Irvine Earl Newton, Earl Herbert, and W. E. Simpson.

Simpson admits that he heard someone shout, "How about my job?" but testified that Bateman made no answer thereto.

Crane was hired by the respondent on August 22, 1935. His testimony is so vague and unrelated to the facts that we can give it no credence whatsoever.

Newton testified that he was hired on August 22 and was not present on the preceding day. His testimony in other respects is also unconvincing. If we are to credit this witness' testimony concerning the date of his employment, then his testimony regarding the August 21 incident is of no value since he would not have been present.

Herbert, the last witness who substantiated Bateman's denial of the statement allegedly made on August 21, 1935, was employed on September 25, 1935. He testified that he "rustled" on August 21, 1935. When asked how he recalled the date, August 21, 1935, he gave the following explanation at the hearing:

> Q. How do you remember the exact date although you don't remember any other dates except the one on which you got your job? A. That was the first time I really got in to talk with Mr. Bateman, and I went home and talked to the wife, and she said, "Well, remember it. We might want to refer to it."
>
> Q. Your wife suggested that you remember that date? A. Yes.
>
> Q. Did she say why you might want to refer to it? A. No, not exactly.

This witness testified also that on August 21, 1935, he preceded Bateman into the employment office. Thus it is possible that Bateman might have made the controverted statement in the brief interval which elapsed before he followed the witness into the employment office.

Lester F. Bethel testified that about 5 days after the strike ended he spoke to Bateman about a job. Bethel claims Bateman said that "the company had never expressed themselves as to what they were going to do with the striking men." Bethel testified that he returned to see Bateman in

December 1935 and that on this occasion, Bateman remarked, "You have an outstanding record, signed by Harry Lavender, but I cannot make no exceptions in your case." Bethel further testified that in May 1936 he met Bateman in the bus waiting room in Lowell and that in response to his query Bateman advised him that union men were not yet being hired.

Frank Peterson testified as follows: About a week after the strike was over he solicited a job from Bateman. In reply to Bateman's inquiry, Peterson admitted that he had served on the picket line. Thereupon he was told that "the company hadn't decided yet what they was going to do with us fellows."

Martin Vaclav testified that in the latter part of August within a week after the strike ceased Bateman answered his request for a job by saying, "that there was no need for me to come up there because he couldn't give me a job because I was one of the men that come out on strike."

Anson Perry Windsor testified that Bateman denied his application for employment in either the last part of August or the first part of September 1935. Windsor claims that Bateman told him that "there wasn't nothing for me, or 'any of my kind,'" and that Bateman's explanation of this latter remark was that they had taken a too important part in the strike.

Joe Henry Dunkerson testified that his efforts to obtain employment with the respondent several days after the strike met with failure. He claims that Bateman told him that he had no chance for a job and that they had done nothing about the strikers yet.

Paul Amaro testified to the following effect: He sought employment from the respondent in the first week of September 1935. Bateman advised him that "he could not consider a job for me or any other striking miner."

William Graham testified as follows: In the first week of September 1935, he asked Bateman if there was any

chance of going to work for the respondent. Bateman replied that "the committee had to pass on all of the men that were hired, and the committee would not pass on any man that came out on strike." Bateman did not give any particulars concerning the committee to which he referred.

Clyde Bigelow testified that in September 1935 he requested employment from Bateman and was refused on the ground that "they hadn't reinstated any of the striking miners yet." Clyde Bigelow testified also that he made another unsuccessful effort to get a job from Bateman in December 1936. The following excerpt from the record describes Bigelow's account of what was said:

> Q. What did you say to Mr. Bateman at that time?
>
> A. I asked him if I could get a job now, and he said, "What? Back again?" I said, "Yes." He said, "Well, you're a glutton for punishment." "Well," I said, "What have they decided to do?" "Well," he said, "we ain't going to reinstate any of the men." "Well," I said, "Will there be any use of me rustling again?" And he said, "No."

Edgar Lewis Hargus testified as follows: Sometime in the last part of October or in November 1935 he applied to Bateman for a job. In response to his query, "How's the chance to go back to work?" Bateman replied, "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line."

Vernon Dell Curtis testified as follows: In October or November 1935 he inquired of Bateman, "How's the chance to go to work? Its pretty tough bucking relief." Bateman's only response was, "There's no chance of the likes of you to get a foothold in this camp again." He happened to meet Bateman in a recreation place in the summer of 1936. In reply to his request for a job, Bateman answered, "In 300 years we will give you fellows a job again." Bateman admitted making this statement but explained that he

was not on duty at the time and that he does not always speak in a serious vein in his conversations.

Frank Erkkila testified that about November 1, 1935, Bateman answered his application for employment with, "Well, you were in the picket line, weren't you?"

Wilfred Davis Mortenson testified that the last of November or the first of December 1935, his request for a job was refused by Bateman, who said, "Mortenson, if you want a job you will have to go to a union camp to get it.—There is nothing in Bisbee for you."

Henry Waters testified that in December 1936 he asked Bateman for a job and that Bateman told him that "he couldn't do a thing for me" and that "you just as well go to a union camp."

The foregoing statements which the above witnesses attributed to Bateman, with one exception already noted, were denied by Bateman either specifically or under a general denial that he had ever made remarks of that nature. We do not credit his denial for various reasons. First, a large number of witnesses whose credibility we have no reason to doubt testified to statements of the same tenor made by him on different occasions in response to requests for employment. Second, the statements attributed to Bateman are consistent with and explained by the respondent's determination to deny reinstatement to strikers, as revealed by other evidence heretofore discussed. Finally, consideration of all Bateman's testimony does not impress us with its reliability. For instance, he testified that he was ignorant of the policy of segregating union members in the Cole shaft just prior to the strike. Since the evidence established the existence of that policy, it seems unlikely to us that the respondent's employment manager, whose duties involved the handling of personnel problems, would be unaware of the policy. In view of the respondent's admitted acts of espionage and detailed records of strikers' activities, the same conclusion applies to Bateman's assertion that he possessed only slight information concern-

ing who were members of the Union. Upon all the evidence we find that Bateman did, in substance, make the statements ascribed to him by the complaining witnesses.

Montague Reed spoke to Keith Davey in June 1936 when Davey was substituting as employment manager while Bateman was on vacation. Reed testified and we find as follows with respect to a conversation that took place in a bar at Brewery Gulch: He asked Davey "If there was any chance of going to work for the Queen again," stating "if there was I would come and rustle." Davey replied that "there never was any chance for me to come back there and go to work and no others fellows that was out on strike." Davey did not testify at the hearing.

W. M. Day testified that on December 8, 1937, he applied for a job from J. G. Berlendis, employment manager who replaced Bateman about August 1, 1937. Day testified to the following interview:

> "Well", he says, "did you ever work for the Company before?"
>
> I says, "Yes, I worked quite a few years for the company." "I know that you have got my record and there is no use in going into any delay or anything of that kind. I have worked here and we had a little trouble here in 1935, and I come out on strike." I says, "Of course, you have that record and I have not been able to get back to work, but," I says, "do you fellows aim to hold that against me?"
>
> "Well," he says, "I don't know whether we do or not." But he didn't tell me to come back.

That the respondent's hostility to the Union was not altered or abated during the years succeeding the strike is evidenced by correspondence in July 1937 between the respondent's officials concerning a new organizational campaign of the Union. On or about July 13, 1937, the union organizers handed out literature outside the respondent's gates. The respondent's attitude towards this development

is reflected by the following letter written by H. M. Lavender, general manager:

July 14, 1937

AIR MAIL
MR. L. S. CATES, President,
Phelps Dodge Corporation,
40 Wall Street,
New York, N. Y.

DEAR MR. CATES:—

Yesterday, Tuesday, near the entrance to the Junction and Campbell Mines were groups of C. I. O. distributing hand-bills, a sample of which is enclosed. Some of these distributors were former employees of Phelps Dodge who went on strike in 1935 and were subsequently employed by the Shattuck-Denn. Whether any outside organizers were present has not yet been determined.

The incident in itself is unimportant except that it shows a change in tactics. While literature of a similar nature has been previously distributed in the Bisbee District, this marks the first time since 1935 that they have attempted solicitation on or adjoining Phelps Dodge property. The thought occurs that the C. I. O. is attempting a "Ford Demonstruction" [sic] in the hope that we will counter with some aggressive measure which would give them a wonderful opportunity to cry "oppression" and appeal to the N. L. R. B. for a hearing, which would be granted without a shadow of doubt. We have instructed our watchmen to ignore these groups so long as they stay outside the company fenced property and are cautioning the employees to likewise ignore them. This, I think is the most effective measure and will be our present policy if the C. I. O. continues their propaganda.

We are hopeful that any open conflict can be avoided but the situation in the District is such that a clash

between the two groups might occur at any time. I was told, confidentially, that a showdown is inevitable between the Union and Shattuck-Denn. The 3rd of July night shift was turned back at the collar of the Denn Shaft by the leaders and this and other acts indicate that the Union may at any time insist upon a closed shop with check-off which I am told will not be granted.

I am not alarmed over this latest move but, am simply passing it on for your information.

Yours very truly

HML-B General Manager
Encl.

A few days later Lavender sent the following letter to Cates with respect to the same incident:

July 17, 1937

AIR MAIL
MR. L. S. CATES, President,
Phelps Dodge Corporation,
40 Wall Street,
New York, N. Y.

DEAR MR. CATES:—

I am enclosing herewith a copy of the latest handbill passed out at the gates of the Junction and Campbell shafts, yesterday, Friday afternoon. Shuper, state organizer for C. I. O., is in charge of these men who again resumed distribution of this literature. About eight men were stationed near the Junction gate and four at the Campbell.

We will continue our policy of ignoring their presence as long as they stay outside the property fence, and will attempt to have the men and authorities do likewise. As before explained, it is so very evident the objective they are asking that we are determined not to play into their hands.

We have reviewed the evidence relating to the respondent's attitude toward the Union and its adherents who participated in the strike. There remains for consideration the questions of whether or not there were jobs available for the strikers[13] after the strike and, if so, whether the strikers were denied reinstatement for discriminatory reasons.

(13) The respondent in a stipulation, dated January 11, 1939, provided the following statistics relative to its pay roll. On August 9, 1935, there were 1,012 persons on the pay roll of the Copper Queen Branch, Mines Division. Between August 9, 1935, and January 27, 1938, the date of the hearing, the respondent experienced the following pay-roll fluctuations:

Month	Number Hired	Number Leaving
August 1935 (from 9th on)	24	69
September 1935	35	53
October 1935	56	22
November 1935	27	11
December 1935	27	16
January 1936	63	22
February 1936	31	21
March 1936	45	16
April 1936	56	24
May 1936	95	18
June 1936	45	35
July 1936	74	36
August 1936	112	44
September 1936	132	57
October 1936	78	42
November 1936	70	36
December 1936	75	30
January 1937	145	75
February 1937	144	66
March 1937	127	53
April 1937	146	57
May 1937	166	59
June 1937	146	62
July 1937	68	61
August 1937	109	85
September 1937	87	137
October 1937	22	370
November 1937	19	82
December 1937	9	186
January 1938 (to 27th)	16	36
Totals	2,249	1,891

The net gain in the number of employees as a result of the turn-over between August 9, 1935 and January 27, 1938, the date of the hearing, amounted to 358. Of the total number of 2,249 occasions on which persons were hired, approximately 1,800 were hired either as muckers or miners. Only about 475 of these miners and muckers were listed as having previous experience in the respondent's service. Out of the total of 1,891 persons who left the respondent's employ, approximately 1,400 were either muckers or miners.

Of the 45 named in the complaint as discriminatorily denied reinstatement by the respondent, all except 9[14] had at sometime worked for the respondent as miners or muckers. If the respondent was hiring muckers and miners at the time the 45 were denied reinstatement it is clear that at least 36 of them could not have been refused employment because of any lack of experience. The nine who had not previously worked for the respondent as miners or muckers had apparently been employed at jobs requiring greater skill.[15] Inasmuch as employees are often hired as muckers and are later advanced to more skilled employment, and in view of the fact that there is a considerable amount of interchange of positions among the respondent's employees, as manifested in the work history of the employees involved in the complaint, we find no reason to believe that persons engaged in the type of work performed by these nine could not have been reemployed as muckers.

Between August 9, 1935, the date of the strikers' first mass application for reinstatement, and August 24, 1935, the date of the termination of the strike, the respondent hired 21 miners and muckers, 15 of whom had not been in the respondent's employ prior to that time.[16] Between August 9, 1935, and January 1, 1936, the respondent hired 40 miners and 116 muckers. Of these, only 7 had previously worked for the respondent more recently than the 45 persons involved in the complaint. Thus, it is clear that there

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(14) These are J. P. Foley, E. A. Curtis, George Gerhardt, William E. Sharp, Michal Mihelich, P. C. Lytle, Jesse Edge, J. M. Morris, and Herschel J. Montgomery.

(15) The persons named in the preceding footnote had last worked as motor swamper, boilermaker's helper, powdermen, motorman, steel sharpener, blacksmith's helper, timberman, and repairman.

(16) The stipulation entered into by the parties after the close of the hearing showed all persons employed or reemployed by the respondent at its Mines Division between August 9, 1935, and January 27, 1938. In August and September 1935 the number of employees who were dropped from the pay roll of the respondent exceeded the number who were hired. This is explained in part by the fact that in both of these months a large proportion of the persons dropped from the pay roll were watchmen. In every other month, however, until September 1937, the number of persons hired exceeded the number of persons dropped from the respondent's pay roll.

were at least 149 jobs for miners and muckers during that period for which those who participated in the strike might have been hired. We therefore conclude that before January 1, 1936, there were jobs available for all of the 45 against whom the respondent is charged with discriminating.

The record in its entirety compels the conclusion that the respondent prior to the effective date of the Act definitely embarked upon and thereafter systematically pursued a policy designed to destroy the Union. Its segregation of union members in the Cole shaft, its admitted espionage activities, its inter-office correspondence, its instructions to the employment manager, its blacklist of the strikers, its statements to individual strikers who sought reinstatement—all demonstrate a single purposeful course of conduct. Its refusal after August 9, 1935, to reinstate any striker or rehire any person associated with the Union either as picketer or otherwise, despite the substantial turnover among its workers, represented the consummation of that purpose and plan. We find that from the inception of the strike the respondent adopted and thereafter executed a systematic policy of excluding strikers and persons associated with the Union from the ranks of its employees.

The respondent maintains that of the 45 persons involved in the complaint 37 voluntarily left its employ on June 10, 1935, and the remaining 8[17] were not in its employ on or immediately prior to that date. It urges, therefore, that none of the complaining witnesses were its employees on July 5, 1935, the effective date of the Act, and hence are not within the protection afforded by the Act.[18] We shall

(17) These eight individuals are William Day, Levi Crandall, John P. Foley, William Daugherty, Grover Cornet, Leonard Guess, Vernon Dell Curtis, and Richard Johnson. We find *infra* that Grover Cornet was an employee of the respondent within the meaning of the Act on June 10, 1935, the day the strike began.

(18) This aspect of the respondent's contention was framed in its brief in terms of remedy—viz. "* * * the Board has no authority to order reinstatement or back pay."

examine this contention first with respect to the 38[19] individuals who ceased work on June 10, 1935, and then with respect to the other 7.

Section 2 (3) of the Act provides:

> The term "employee" shall include any employee * * * and shall include any individual whose work has ceased as a consequence of, or in any connection with, any current labor dispute, or because of any unfair labor practice * * *.

Section 2 (9) of the Act provides:

> The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment * * *.

We find that the strike was a labor dispute[20] involving a controversy over the tenure of employment of the eight union members discharged on June 8, 1935; that the strikers' work ceased as a consequence of that labor dispute which was current on July 5, 1935,[21] the effective date of

(19) This figure includes Grover Cornet. See footnote 17, *supra*.

(20) The respondent urges that for various reasons the action of its employees on June 10, 1935, did not constitute a strike and that such individuals did not acquire the status of striking employees. There is no merit in that contention.

(21) The respondent contends that even if there was a strike on June 10, 1935, the strike ceased to be current before July 5, 1935, because the strikers' jobs had been filled before that date, and that hence the strikers did not enjoy the status of striking employees on that date. While the filling of jobs is one of the criteria for determining whether a strike continues in existence, it is neither determinative nor controlling on the issue. See the comment on subsection (2) of Section 21 of Chapter 38 of the Restatement of the Law of Torts where the precise point at issue is treated in the following language: "Under the definition in Subsection (2), of the Restatement of Tort, Proposed Final Draft No. 6 (April 4, 1939), workers are employees in their relation to the employer against whom they are on strike, or by whom they are locked out, so long as the strike or lockout continues. This does not mean that they retain all their rights, powers, privileges and duties as employees. It does not mean that they are entitled to wages, for example, or that they have the power to subject the employer to liability to third persons. It means merely that so long as the strike or lockout continues they retain the privileges and liabilities of concerted action by employees. For this purpose a strike does not necessarily end when the employer fills the places left by the strikers.

(*Footnote continued on next page.*)

the Act; and that the strikers rotained their status as striking employees on that date.[22] As such striking employees they were entitled to protection against the unfair labor practices denounced by the Act.[23]

While it is true that the strikers' jobs had been filled by June 28, 1935, they occupied the status of striking employees on August 9, 1935, the date of their first mass application for reinstatement,[24] and as striking employees were entitled to consideration upon a non-discriminatory basis for reinstatement to jobs as vacancies occurred. In the period between August 9, 1935, and August 24, 1935, 21 vacancies were filled, but the respondent, despite knowledge of the strikers' desire to return to work, reinstated none of them.[25] Thus, in accordance with its predetermined and fixed policy,

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The strike continues so long as the workers have not abandoned it by taking permanent employment elsewhere or otherwise, even though the employer has filled their places and is operating at normal capacity. When workers are still continuing their concerted strike activities and their efforts to prevent normal operations, their replacement cannot be regarded as permanent. It is probably true today that most men taking jobs so made vacant realize from the outset how tenuous is their hold. On the other hand, the mere fact that a strike or lockout has not been officially called off, as by a union vote or other declaration, is not conclusive evidence of its continued existence. It may be abandoned without such official action. The issue is one of fact; in the case of a strike, whether or not the employees are still seeking by concerted action to return to their work and achieve some or all of their demands. When the concerted action has ceased, the individual action of workers who remain aggrieved is not subject to the rules stated in this Chapter" (see SS 766-774).

(22) The respondent urges that the Act should not be given retroactive application. In our view the Act is being applied not retroactively but prospectively, since the employees were striking employees on July 5, 1935.

(23) *Mackay Radio & Telegraph Co.* v. *N. L. R. B.*, 304 U. S. 333.

(24) The strikers made two mass applications for reinstatement, on August 9, 1935, and August 23, 1935, and the majority of the strikers made one or more individual applications either before or after those dates, yet none of them was reinstated. Some strikers did not apply individually after August 23, 1935. We find that in view of the respondent's determination not to reinstate any of them, which was known to the strikers, individual application was futile and became unnecessary. See *Matter of Sunshine Mining Company and International Union of Mine, Mill and Smelter Workers*, 7 N. L. R. B. 1212; *Matter of Carlisle Lumber Co.* and *Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington, and Associated Employers of Onalaska, Inc., Intervenor*, 2 N. L. R. B. 248, aff'd. in 94 F. (2d) 138 (C. C. A. 9) and 99 F. (2d) 333 (C. C. A. 9).

(25) Although all the strikers could not have been reinstated during that period since only 21 jobs were available, each of them had a valid claim to consideration for reinstatement to available jobs.

the respondent denied them consideration for reinstatement simply because of their strike and union activities. In barring the strikers from employment when jobs were available, solely because of the fact that they were strikers, we find that the respondent unlawfully discriminated against all of them to discourage membership in a labor organization and thereby committed unfair labor practices within the meaning of Section 8 (1) and (3) of the Act. We further find that on and after August 24, 1935, when the strike was formally ended, the strikers retained their status as employees since between August 9, 1935, and the former date, the resumption of their status as working employees had been discriminatorily denied them by the respondent's unfair labor practices. After August 24, 1935, the respondent continued its discrimination against them although large numbers of jobs became available.

However, even if, contrary to our finding, after the termination of the strike on August 24, 1935, the status of the 38 strikers was not that of employees within the meaning of the Act, the Act protected them against discrimination to discourage membership in a labor organization. The seven individuals who were admittedly not employees were likewise protected. On this precise point we repeat what we have recently said in *Matter of Waumbec Mills, Inc.* and *United Textile Workers of America*[26]:

> It is well established that the Act is not intended to interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The respondent's contention, however, that the Act has no application whatever prior to the formation of the employer-employee relationship is clearly and specifically contradicted by the terms of Section 8 (3) of the Act which provides, "It shall be an unfair labor practice for an employer—By discrimination in regard to *hire* or tenure of employ-

(26) 15 N. L. R. B., No. 4, at p. 9.

ment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *" A reference to the legislative history of the Act indicates that the provision means exactly what it says. In addition, the broad purpose of the Act to further industrial peace by "encouraging the practice and procedure of collective bargaining" is irreconcilable with the proposition that employers may debar union applicants with impunity.

Section 8 (1) of the Act likewise covers a discriminatory refusal to hire as well as a discriminatory discharge. Simply stated, Section 8 (1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their rights of self-organization and collective bargaining. One form of interference, restraint, and coercion is the discharge for union membership or activities of an individual already employed. Another such form is the refusal to hire an individual seeking employment for the same reasons. Each is an open warning to all persons already employed, and it is the interfering, restraining and coercive effect upon these employees that constitutes the violation of Section 8 (1) in both cases. Hence it is immaterial whether the individual discriminated against is already an employee or merely an applicant for employment.

Since discrimination in hiring is as telling a form of interference with self-organization as any other and as much an incitement to disputes burdening and obstructing commerce, such discrimination is plainly in conflict with both the policy and purposes of the Act.

We have hereinabove found the respondent systematically applied a general policy of refusing to reinstate or

hire persons who participated in the strike. This mass discrimination for engaging in concerted activities in behalf of the Union, however, is negatived in some individual instances by other factors which will be discussed as we consider each individual case below.

WILLIAM M. DAY was first employed by the Calumet & Arizona Company in April 1929. In 1931 that company and the respondent merged. After the merger Day continued in the respondent's employ. At the end of April 1935 Day was transferred from the Campbell shaft to the Cole shaft. On June 6, 1935, while coming off the shift, Day was discharged by the mine foreman, Ratteree. The circumstances surrounding the discharge of Day and seven other persons on June 6, 1935, have already been set forth in the description of the events preceding the strike.[27]

We find that Day was discharged prior to July 5, 1935, and was denied reinstatement, not because of his union membership and activities, but for other reasons.

LEVI CRANDALL was first employed by the Calumet & Arizona Company in 1927. After the merger he worked continuously until he was discharged on June 6, 1935. The reasons and circumstances attending his discharge are the same as those applicable to Day.

We find that Crandall was discharged prior to July 5, 1935, and was denied reinstatement, not because of his union membership and activities, but for other reasons.

JOHN PATRICK FOLEY entered the employment of the Calumet & Arizona Mining Company in 1926. At the time of the merger in 1931 he was transferred to the pay roll of the respondent. He worked continuously for the respondent until January 15, 1935. There was testimony to the effect that for a few months prior to this date the foreman had complained that Foley was not doing a sufficient amount of work. On this date he obtained a 30-day furlough from

(27) See Section III, A, *supra*.

the respondent. He thereupon set out for Mojave, California, where he found a job. He overstayed his furlough without notifying the respondent. Foley returned to Bisbee on May 30 and sought employment with the respondent on June 1, 1935. Bateman asked him to return in a few days. Foley testified and we find that he returned on June 4, 1935, and that Bateman said, "John, as far as safety and working conditions are, your record is good, but they have something against you" and that Bateman further stated, "John, you need not never come back here no more * * * I'm hiring men, but I won't want you." Thus Foley was refused reinstatement prior to the effective date of the Act, for reasons which, while equivocal, bear no apparent relationship to his union membership or activities.

Foley was a member of the Union and served on the picket line throughout the strike. He never applied for work after June 4, 1935.

We find that the respondent refused employment to Foley, not because of his union membership and activities, but for other reasons.

HERSCHEL J. MONTGOMERY was first employed by the respondent in 1909. He worked at intermittent periods for the respondent until June 10, 1935, when he joined his fellow union members out on strike. In regard to Montgomery, A. C. Reifsnider, the respondent's master mechanic, testified to the following effect: Montgomery came under Reifsnider's jurisdiction in 1931 when he was assigned to the then idle concentrator as a watchman. Instead of performing the duties involved in that task he was repeatedly absent from the premises both during the daytime and at night. He was never given permission to leave and he was repeatedly warned to stay on the job. After 2 or 3 months he was relieved of that assignment and placed in one of the mine change rooms as a change-room attendant. The transfer was made because of his failure to attend to his duties as a watchman. He failed to give satisfaction on the new

assignment and after a few months was transferred to the boiler shop as a boilermaker's helper.

In the boiler shop Montgomery still evidenced an indifferent attitude toward his job. He spent more time talking and arguing than taking care of his work. In spite of warnings, this continued and in July 1934 he was discharged. Because of his long service record with respondent, however, he was given another chance and put back to work. Reifsnider further testified that he would not willingly have Montgomery in his employ in the mechanical department because his service record was unsatisfactory and because he was more of a "demoralizing spirit" than "an asset." There was further testimony by Reifsnider that it was just a matter of months before Montgomery would have been discharged if the strike had not intervened and that only his long service record had persuaded the respondent to carry him on so long in spite of his unsatisfactory services.

Although Montgomery denied that he was ever incompetent in his work, his employment card substantiates in part, at least, the testimony of the respondent with regard to him.

In view of the fact that the respondent did not deem Montgomery's employment record an obstacle to his employment prior to the strike and in view of our findings concerning the respondent's general policy with respect to reinstatement of strikers, we are not persuaded that it was the cause of the respondent's refusal to reinstate him. We find that the respondent refused employment to Montgomery because of his union membership and activities.

We find that Montgomery has not secured regular employment which is substantially equivalent to his employment with the respondent.[28]

William Daugherty, a member of the Union, was first employed by the respondent in 1925. He worked intermit-

(28) In its brief, the respondent states that it does not contend that Montgomery has secured substantially equivalent employment.

tently for the respondent until August 1931 when he was laid off because of a reduction in force. He was reemployed by the respondent in June 1934. His employment card lists him as being dropped on October 15, 1934. The card further contains remarks that Daugherty does not like to work and that not only were his services unsatisfactory but that his surly disposition was disagreeable to the bosses.

Although he was in Bisbee at the time the strike occurred he did not appear on the picket line. He was a member of the Union but he was not paid up in his dues nor did he attend any meetings. The only meeting of the Union which he ever attended was the night that he joined the Union, the date of which he was unable to fix more accurately than that it was in 1934 or 1935.

After the discontinuance of the strike, the first time that Daugherty applied for a job with the respondent was about January 15, 1937. Bateman told him that "If there is an opening over at the Cole I will send you over there." Daugherty was thereupon given a physical examination by the physician. The next morning Daugherty returned to the employment office and claims that Bateman said, "Daugherty, I can't send you up there. There was some men down to see me and they said you called them 'scabs,' and I don't want no trouble up there." Daugherty further claims that Bateman said, "There is no use for you coming here for any more work." Bateman denied these statements and said that he rejected Daugherty's application because he failed to pass a physical examination. Daugherty's testimony makes no mention of the result of the physical examination. The respondent introduced no further proof to substantiate Bateman's claim relative to Daugherty's failure to pass the physical examination.

In view of the fact that Daugherty's testimony concerning Bateman's statement is consonant with the respondent's policy, and in view of our previous findings with respect to Bateman's testimony, we find that the respondent discrimi-

nated with respect to the hire of Daugherty because of his union membership and activity.

EDGAR LEWIS HARGUS was first employed by the respondent in 1924 for a period of about 3 months. His last continuous employment with the respondent was from 1927 to June 10, 1935. Prior to the strike he had worked as a miner at a wage of $5 per day. As a member of the Union he went out on strike on June 10, 1935. He served on the picket line until the last part of July. He sought employment from the respondent in the last part of either October or November 1935. Bateman informed him "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line." Hargus never applied again for a job with the respondent.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Hargus because he struck and engaged in concerted activities in behalf of the Union.

After June 10, 1935, for about 9 months Hargus worked intermittently at relief jobs and a variety of temporary jobs. In February or March 1936 he was employed by the Shattuck Denn Mining Company as a miner. This mine is located about a half mile from the Junction shaft of respondent's mine. He retained this job until December 1936 when he left it for a better job with the Banner Mining Company in Lordsburg, New Mexico. He worked at this new job as shift boss for a period of 8 months. He left this job because he did not like the location and was tired of it. In October 1937 he returned to the employ of Shattuck Denn in Bisbee. Since that date he was worked there continuously as a miner. His rate of pay at the time of the hearing was $5.48 per day. At the hearing Hargus expressed a desire to return to the employ of the respondent.

The respondent contends that Hargus as well as the other complaining witnesses who were ultimately employed by the Shattuck Denn Mining Company have secured regular

and substantially equivalent employment. We reject this contention for reasons stated below.

There is evidence that many of the working conditions and rates of pay in the Shattuck Denn Mine approximate those in the respondent's mine. Yet there are marked and substantial differences between the two companies. First and most important is the difference with respect to continuity and security of employment based upon the relative size of the two companies. At the time of the hearing the respondent employed over approximately 1400 persons while Shattuck Denn employed approximately 200 persons. The importance of this difference in size was manifested during the period from 1931 through 1934. Shattuck Denn ceased its operations from 1932 to 1934. Although the respondent reduced its force during these same years, nevertheless it continued to operate. A large number of the complaining witnesses were employed by the respondent during that period when Shattuck Denn employees were without work.

Second, the record discloses that the respondent made necessary lay-offs on the basis of seniority. The possession of seniority rights is patently a highly desirable adjunct to employment, in an industry where payroll fluctuations are as prevalent as in the mining industry.

Third, the respondent's employees desire to maintain continuous service records. That the respondent itself attached importance to continuous service records is established by its practice of awarding a present to employees in recognition of 10 years of continuous service without a lost-time accident.

Upon the basis of all the factors enumerated, we find that Hargus had not secured regular and substantially equivalent employment.[29]

(29) See *Matter of Mooresville Cotton Mills* and *Local No. 1221, United Textile Workers of America*, 15 N. L. R. B., No. 43.

JOHN HENRY KEY, a member of the Union, was first employed by the respondent in 1928 and worked continuously until the depression commenced. He worked again for the respondent for about a month in 1931. In 1934 he was reemployed by the respondent and worked steadily until he joined the strike on June 10, 1935. He was classified as a miner on his employment card and was earning $5 per day at the time of the strike. He served on the picket line throughout the entire strike.

Two or three days before the end of the strike, presumably August 21, 1935, in response to Bateman's request for miners, Key, along with Day and several other strikers, asked for reinstatement. Bateman's refusal has already been described. About 6 months after the strike was discontinued Key again solicited a job from Bateman. Bateman advised him to return later after he had taken "his case up." Key returned in about a week and was told, "I can't do a thing for you."

Upon the basis of all the evidence we find that the respondent denied reinstatement to Key because he struck and engaged in concerted activities in behalf of the Union.

A résumé of the jobs which Key occupied between August 9, 1935, and the date of the hearing follows: The first work that he secured was with Shattuck Denn Mining Company in September 1935. He worked there as a shaftman for about 2½ months and voluntarily quit when that company started concreting. The concreting operations seriously affected his health. During that period he earned in excess of $5 per day. In the middle of January 1936 Key journeyed to Idaho where he obtained a job as shaftman with the Sunshine Mining Company in Kellogg about February 1, 1936. After about 2 months he quit that job because it was too cold. After doing some relief work his next job was as a timberman working for Jim McKenna, a lessor. He commenced working for McKenna about May 1936. He was discharged after 2 weeks. After he ceased working for McKenna he

returned to the employ of the Shattuck Denn as a machine miner in August 1936. He has worked there steadily since that date. His rate of pay at the time of the hearing was in excess of $5 per day. Key expressed a desire to return to the employ of the respondent because as he stated, "* * * I have a family to feed, and it is the best place to work. I figure a man can live longer and it's more sure of your job. Shattuck Denn * * * you may have a job today, and it is a small outfit, and they may be closed down next week." These considerations weighed so greatly with Key that he, like several other complaining witnesses, indicated that he would be willing to return to the respondent at a reduced wage rate if necessary.

The respondent claims that Key had obtained regular and substantially equivalent employment. The same factors, discussed in our consideration of Hargus, which induced us to find that employment with the Shattuck Denn Mining Company does not constitute substantially equivalent employment, influences us to find that employment with the Sunshine Mining Company of Kellogg, Idaho, is likewise not substantially equivalent employment. In addition to the loss of seniority rights and continuous service record, there are the additional factors that it is distant from Key's established home and is unduly cold.

We find that Key has not obtained other regular and substantially equivalent employment.

GEORGE EDWARD FRAZER was first employed by the respondent as a mucker in March 1934. At the time he went out on strike on June 10, 1935, he was employed as a miner at a wage rate of $5 per day. He picketed until the end of the strike. He never applied for work with the respondent because he felt that it would be useless. Two or three days after commencement of the strike he heard Bateman say, "If you boys don't go back to work tomorrow you will never work for the company again." Shortly before the strike ceased (apparently August 21, 1935), he was present when

Bateman stated that the strikers would never work for the respondent again. For reasons heretofore stated, we regard it as unnecessary for Frazee to have made individual application for reinstatement.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Frazee because he struck and engaged in concerted activities in behalf of the Union.

Between the cessation of the strike and February 1937 when Frazee was employed by the Shattuck Denn Mining Company as a miner, he was intermittently employed at various temporary jobs and relief work. Frazee has worked steadily for the Shattuck Denn Mining Company at the rate of $5.48 per day. He expressed a preference for his old job at the respondent's mine even if it involved a return to the wages he was receiving on June 10, 1935.[30]

The respondent claimed that Frazee had obtained regular and substantially equivalent employment. On some of the temporary jobs on which he has worked since August 1935, he has earned more money per day than he was making while with the respondent. In spite of this fact, however, because of the other factors of seniority, continuous service record as well as distance from his established home, we find that Frazee has not secured regular and substantially equivalent employment.

EDWARD BOWDEN, a union member, first began to work for the respondent in 1920. He was laid off in 1921 and reinstated in 1922. He first began to work continuously for the respondent in 1927. He worked as a miner from that date until June 10, 1935, when he joined the picket line. His last rate of pay while employed by the respondent was $5 per day. On his employment record there are several remarks denoting the excellent quality of his work. After the strike Bowden applied to Bateman for a job in the middle of

(30) Frazee was receiving $5 per day as a miner in June 1935. The wage rate, apparently, has increased between that date and the time of the hearing, since there was ample testimony to the effect that the wage rates at the Shattuck Denn Mining Company followed those of the respondent exactly.

September 1935. Bateman informed him that they had not yet made a disposition of his case and that it would be useless for him to rustle until they disposed of it. He never applied again.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Bowden because he struck and engaged in concerted activities in behalf of the Union.

In March 1937 Bowden secured a job as a timberman with the Shattuck Denn Mining Company. At the time of the hearing, he was working there as a timberman at $5.76 per day. During June 1935, until November of the same year, Bowden worked on relief 7 days per month. In November he obtained work with the Arizona Edison Company. There he earned at first $4 per day for 6 days per week. Later he was paid a salary of $110 per month, working every day in the week. Bowden expressed a desire to return to his old job with the respondent even if it necessitated a reduction in the present wage he was earning. We find that Bowden did not secure regular and substantially equivalent employment.

PAUL AMARO, a member of the Union, was employed in March 1934 and worked as a miner until he went on strike on June 10, 1935. He was earning $5 per day. He appeared on the picket line throughout the entire strike. About the first week in September 1935 Amaro solicited a job from Bateman. He was told by Bateman that "he could not consider a job for me or any other striking miner." That was the last time Amaro applied for work with the respondent.

Upon the basis of all the evidence we find that the respondent denied reinstatement to Amaro because he struck and engaged in concerted activities in behalf of the Union.

In June 1936 Amaro secured a job as miner with the Shattuck Denn Mining Company. He was employed there steadily until the date of the hearing. He earns $5.48 per day. Prior to this employment, besides some relief work, he worked with the Boriana Mining Company, Kingman,

Idaho, from September 1935 until about March 1936. This labor paid him at the rate of $4.50 per day, working every day in the week. Amaro prefers to return to his old job with the respondent even if it involves a reduction in the amount of wages he was currently earning.

The respondent claimed that Amaro had obtained regular and substantially equivalent employment. For the same reasons which we set forth in our consideration of the cases of Hargus and Key, we find that Amaro has not secured regular and substantially equivalent employment.

WILFRED DAVIS MORTENSON, a union member, commenced to work for the respondent in July 1929 and was laid off because of a reduction in force in 1930. He was reemployed as a mucker in April 1934 and worked continuously until the occurrence of the strike. At that date he was working as a miner at $5 per day. He served on the picket line until the strike ceased. He applied to Bateman for a job sometime during the last of November or the first of December 1935. Bateman rejected his application saying, "Mortenson, if you want a job you will have to go to a union camp to get it. There is nothing in Bisbee for you." Mortenson has not applied since that occasion.

On the basis of all the evidence we find that the respondent denied reinstatement to Mortenson because he struck and engaged in concerted activities in behalf of the Union.

Since August 1936 Mortenson has been employed as a miner by the Shattuck Denn Mining Company. Since he has been there he has earned not less than $5.48 per day. Prior to this job he was employed as a service station attendant on a commission basis in Douglas, Arizona. This job, which he obtained in the latter part of October 1935, yielded him an average income of approximately $100 per month. Mortenson expressed a desire to return to the employ of the respondent.

The respondent claimed that Mortenson had obtained regular and substantially equivalent employment. For the

same reasons set forth in our discussion of Hargus, we find that Mortenson has not secured regular and substantially equivalent employment.

ANSON PERRY WINDSOR, a union member, was first employed by the respondent in June 1934. He was listed as a mucker, earning $4.40 per day. In March 1935 he was off on the sick list. When he joined the strike on June 10, 1935, he was still on the sick list. He was on the picket line throughout the strike. About the last of August or the first of September he applied to Bateman for reinstatement. He was told by Bateman that there was nothing for him or any of his "kind" because they "took too an important part in the strike."

On the basis of all the evidence we find that the respondent denied reinstatement to A. P. Windsor because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing A. P. Windsor was employed by the Shattuck Denn Mining Company. He operated a slusher but was classified as a miner earning $5.48 per day. He has held that job since November 23, 1936. Other employment which he has held since the strike includes a month of relief work and 9 months of work for a road contractor. When the latter job was completed he was laid off. His pay on the road job varied from $4 to $6 per day. At the hearing, A. P. Windsor expressed a desire to return to the employ of the respondent at his old wage in preference to his present job with Shattuck Denn.

For the same reasons we have given in the case of Hargus, we find A. P. Windsor has not secured regular and substantially equivalent employment.

EMERY ADELBERT CURTIS started to work for the Calumet & Arizona Mining Company in 1925. He worked for that concern until it merged with the respondent in 1931. Thereafter he continued to work for the respondent until the strike occurred. At the time of the strike he was working

as a powderman, earning the same pay as a miner. He served on the picket line until almost the middle of August 1935. He did not apply for work with the respondent after the strike ceased because other strikers who tried told him of their failure.

Upon the basis of all the evidence we find that the respondent denied reinstatement to E. A. Curtis because he struck and engaged in concerted activities in behalf of the Union.

With the exception of a month's work for the Phoenix-Tempe Stone Company in the fall of 1935 and a week's work in 1937, E. A. Curtis has been occupied only by relief work. He did not apply for work other than relief work because he felt he was a little old. He would like to return to his old job with the respondent.

We find that E. A. Curtis has not obtained regular and substantially equivalent employment.[31]

TOM ABEDIN, a union member, spent 9½ years in the employ of the Calumet & Arizona Mining Company prior to its merger with the respondent in 1931. Thereafter he worked with the respondent as a miner until March 8, 1932, when he was laid off because of a reduction in force. On February 13, 1934, he was reemployed as a miner and worked until June 10, 1935, when he joined the strike. On the latter date he was earning $5 per day. He served on the picket line every day throughout the duration of the strike. The first time he spoke to Bateman concerning a job was in January 1936 when he encountered him on the street in Lowell. He was told by Bateman that there was "No showing for us guys no more." He did not apply for a job sooner because several of his friends who had tried to secure employment had told him that it was useless for him to try. He has not applied for a job with the respondent at any time since that occasion.

(31) In its brief the respondent does not contend that E. A. Curtis has obtained substantially equivalent employment.

On the basis of all the evidence we find that the respondent denied reinstatement to Abedin because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Abedin was employed as a miner at the Boras mine at the rate of $5.50 per day. He obtained this job in November 1937. The work, however, was irregular. The only other employment, other than relief work, which Abedin had between the strike's cessation and the date of the hearing was a 2-month job as a miner for a lessor. He was laid off of this job with several other employees. In October 1936 the Shattuck Denn Mining Company rejected Abedin's application for a job because of kidney trouble.

The respondent claims that Abedin had obtained regular and substantially equivalent employment. For the same reasons we have set forth in the case of Hargus, we find that Abedin has not secured regular and substantially equivalent employment.

JOE HENRY DUNKERSON, a member of the Union, worked for the Calumet & Arizona Mining Company for 3½ years prior to its merger with the respondent. Since the merger, in 1931, he has worked for the respondent as a tool nipper until the event of the strike. He was classified on his employment card as a mucker. At the time he went on strike he was earning $4.40 per day. He served on the picket line until 2 or 3 days before the discontinuance of the strike. Dunkerson applied for reinstatement with the respondent several days after the strike ceased. His request was refused by Bateman who told him that he had no chance for a job and that they had not done anything about the strikers yet. He has not applied for a job with the respondent since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Dunkerson because he struck and engaged in concerted activities in behalf of the Union.

On June 13, 1936, Dunkerson entered the employ of the Sunshine Mining Company at Kellogg, Idaho, where he worked for a period of 2 months. In spite of the fact that he received wages in excess of $5.25 per day, he quit that job because he was not assured that it would be permanent. The only other work which Dunkerson had between the cessation of the strike and the date of the hearing, in addition to relief work, has been a short period of employment with the Banner Mine. His job with the Banner Mine terminated when he was taken ill.

The respondent claims that Dunkerson has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus and Key, we find that Dunkerson has not obtained regular and substantially equivalent employment.

GROVER D. WINDSOR, a member of the Union, started in the employ of the respondent on June 8, 1934, as a mucker. On June 10, 1935, when he went on strike, he was running a muck machine at $5.24 per day. He served on the picket line every day until June 26. On or about November 1, 1935, he applied for a job with the respondent and his request was refused by Bateman, who said: "A hundred years after the next War I'll give you a job." He has not since applied for a job.

On the basis of all the evidence, we find that the respondent denied reinstatement to Grover D. Windsor because he struck and engaged in concerted activities in behalf of the Union.

Since November 1936 Grover D. Windsor has been employed by the Shattuck Denn Mining Company as a mucker, running a muck machine. He has not earned less than $5.76 per day while on that job. Prior to obtaining that job he was occupied for a while with relief work and a construction job.

The respondent claims that Grover D. Windsor has obtained regular and substantially equivalent employment.

For the same reasons set forth in our discussion of Hargus, we find that Grover D. Windsor has not obtained regular and substantially equivalent employment.

MARTIN VACLAV, a member of the Union, first started to work for the Calumet & Arizona Mining Company, approximately 4 years prior to the merger in 1931. At the time of the merger he was transferred to the pay roll of the respondent as a miner and worked continuously until he went on strike on June 10, 1935. He was earning $5 per day just prior to the strike. He appeared on the picket line until the latter part of July. Within a week or so after the strike ceased, he solicited a job from Bateman and was informed that he could not be given a job because he had gone out on strike. That was the last time he applied for a job with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Vaclav because he struck and engaged in concerted activities in behalf of the Union.

In January 1937 Vaclav entered the employ of the Shattuck Denn Mining Company as a mucker at the rate of $4.84 per day. He remained there until May 1937 when he left their employ. He reentered the employ of the Shattuck Denn Mining Company in October 1937 as a miner at a rate which was never less than $5.48 per day, and was so occupied at the time of the hearing. The only other employment which Vaclav had since the termination of the strike consisted of odd jobs of short duration. He expressed a preference for his old job with the respondent.

The respondent claims that Vaclav has obtained regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Vaclav has not obtained regular and substantially equivalent employment.

MONTAGUE REED has been intermittently employed by the respondent since 1924. On these previous occasions he was

laid off because of reductions in force. In September 1935 he was reemployed by the respondent. At the time of the strike he was working as a miner, earning $5 per day. Although he was not a member of the Union, he went on strike on June 11, 1935. He served on the picket line frequently until June 26, 1935. When he called for his pay check on June 21, during the course of the strike, Bateman instructed him to clean out his locker, saying that "as far as you fellows are concerned, the strike is never going to be ended for you." In June 1936 Reed encountered Keith Davey, who was temporarily acting as the respondent's employment agent, in a bar in Brewery Gulch. On this occasion Davey informed him that there was no chance for any of the strikers to return to the employ of the respondent. Reed has not applied for a job with the respondent since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Reed because he struck and engaged in concerted activities in behalf of the Union.

Since August 14, 1936, Reed has been employed as a miner by the Shattuck Denn Mining Company, earning $5.48 per day. The only other work which Reed had since the strike ceased was relief work. He expressed a preference to return to the employ of the respondent.

The respondent claims that Reed has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Reed has not obtained regular and substantially equivalent employment.

MILTON WYNN commenced his employment with respondent in 1934, when he worked there for about 3 months. He was reemployed in June 1934 as a mucker. He worked continuously until he went out on strike on June 10, 1935. Just prior to the strike Wynn was operating a gunite machine, earning $5.23 per day. Although he was formerly a member of the Union he ceased being a member prior to

June 1935. He appeared on the picket line only once or twice. A week or two after the strike, Wynn encountered Bateman outside of office hours. Bateman told him that there was no chance of going to work and refused to give him a service recommendation letter to aid him in obtaining another job in Idaho. Wynn has not applied for a job with the respondent at any time since then.

The respondent moved to dismiss the complaint as to Wynn on the ground that he was not a member of the Union. It is immaterial that Wynn was not a member of the Union. He, in fact, was discriminated against because he engaged in concerted activity with other employees for mutual aid and protection under the direction of the Union. Such discrimination is intended to and has the necessary effect of discouraging membership in a labor organization and falls within the prohibition of Section 8 (3) of the Act.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Wynn because he struck and engaged in concerted activities in behalf of the Union.

In November 1935 Wynn obtained employment with the Inspiration Copper Company at Miami, Arizona, but quit that job after approximately a month because of a dispute over his wage rate. Other employment which Wynn has had since the strike ceased includes assisting attending a bar, and working at Parker Dam. At the time of the hearing he was still employed at bartending but was working only a few days a week.

The respondent claims that Wynn has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Wynn has not obtained regular and substantially equivalent employment.

ALEXANDER KALASTRO, a member of the Union, was first employed by the respondent in August 1934. He worked continuously until June 12, 1935, when he went out on strike. At that time he was working as a swamper on a motor, earn-

ing $5 per day. He served on the picket line for only 1 day. After the termination of the strike in the latter part of August 1935 he applied to Bateman for a job and was told "Nothing doing." He has not applied for a job with the respondent since that time.

On the basis of all the evidence, we find that the respondent denied reinstatement to Kalastro because he struck and engaged in concerted activities in behalf of the Union.

Since February 1937 he has been continuously employed by the Shattuck Denn Mining Company as a miner, earning $5.48 per day. At the time of the hearing the Shattuck Denn Company was working lay-offs on a turn-about system and there had been an interruption in the continuity of his employment. Prior to his employment with the Shattuck Denn Mining Company the only other jobs he had were relief work and odd jobs. He desires to return to his old job with the respondent even if it involves a reduction in pay.

The respondent claims that Kalastro has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Kalastro has not obtained regular and substantially equivalent employment.

WILLIAM HENRY BIGELOW, a member of the Union, was first employed by the respondent in 1908 and worked intermittently thereafter. The last time he was laid off was in 1930 or 1931. He was reemployed in May 1934 as a miner, earning $5 per day. He worked at this until he went out on strike on June 10, 1935. He served on the picket line off and on until August 21, 1935. He has never applied to the respondent for reinstatement because his brother, Clyde Bigelow, had applied and told him that there was no use applying.

On the basis of all the evidence, we find the respondent denied reinstatement to William Henry Bigelow because he struck and engaged in concerted activities in behalf of the Union.

In December 1936 he was hired by the Shattuck Denn Mining Company and has worked there continuously since. At the date of the hearing he was earning in excess of $5 per day as a miner. Prior to the job with the Shattuck Denn Mining Company he had been occupied only by relief work and work on his own ranch.

The respondent claims that W. H. Bigelow has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that William Henry Bigelow has not obtained regular and substantially equivalent employment.

WILLIAM WINDSOR, a member of the Union, was first employed by the Calumet & Arizona Mining Company in 1925. He worked there irregularly until the merger, when there was a general lay-off. He was reemployed by the respondent in September 1933 as a miner. Within a week, however, he was put on as a helper on a motor, though when he went out on strike on June 10, 1935, he was working as a miner, earning $5 per day.

He was on the picket line during the strike until about the middle of July. About the middle of September 1935 he solicited a job from Bateman and was told, "I have taken up a few cases like yours, but they don't know what they want to do about it." About 2 weeks later, Windsor's effort to get a job with the respondent met with a similar response. Since that date he has not applied for employment with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Windsor because he struck and engaged in concerted activities in behalf of the Union.

Since December 2, 1936, Windsor has been continuously employed by the Shattuck Denn Mining Company. At the time of the hearing he was working as a flusherman at $5.48 per day. Prior to this job his employment included relief work and work as a common laborer for a road construc-

tion company. Windsor considers a job with the respondent preferable to the one that he presently has, because he believes that his return to the employ of the respondent would indicate that the blackball against him was lifted. This is of concern to him, since he stated that "if I got froze out at the Denn I would be through in this district as far as mining employment is concerned."

The respondent claims that Windsor has secured regular and substantially equivalent employment. For the same reasons set forth in our discussion of Hargus, we find that Windsor has not obtained regular and substantially equivalent employment.

ELLIS MERAN SCALES, a member of the Union, commenced to work for the respondent in February 1926. He worked continuously until he went out on strike in June 1935. At the time of the strike he was working as a motorman, earning $5.24 per day. He served on the picket line until the last day of the strike. After the strike terminated, Scales applied for work some time between August 24 and August 28, 1935, on which occasion Bateman informed him that "he had other boys in a similar position and that he could not do anything for them." That was the last time Scales applied for work with respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Scales because he struck and engaged in concerted activities in behalf of the Union.

Since October 28, 1936, he has been working steadily for the Shattuck Denn Mining Company. He was first employed there as a mucker but at the time of the hearing he was working as a finley operator at $5.76 per day. Prior to obtaining the job with the Shattuck Denn Mining Company he had been occupied only by relief work and other casual employment. He worked in a mine for a lessor for about 3 months and was employed by a construction contractor for about 4 months.

The respondent claims that Scales has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Scales has not secured regular and substantially equivalent employment.

FRANK ERKKILA, a member of the Union, commenced to work for the respondent about June 1, 1934. He started as a mucker but when he went on strike on June 10, 1935, he was working as a miner, earning $5 per day. He appeared on the picket line until the last week of the strike. On or about November 1, 1935, Erkkila sought employment from Bateman and was met with the response, "Well, you were on the picket line, weren't you?" Erkkila then related his straitened circumstances and requested information as to where he might find a job. Bateman mentioned the possibility of a job with the Miami Copper Company. That was the last time Erkkila sought employment with respondent.

On the basis of all the evidence, we find that the respondent has denied reinstatement to Erkkila because he struck and engaged in concerted activities in behalf of the Union.

In the last part of January or February 1936 Erkkila entered the employ of the Shattuck Denn Mining Company. He started to work there as a mucker but at the time of the hearing he was working as a miner, earning $5.48 per day. Prior to obtaining the job with the Shattuck Denn Mining Company, he was occupied only by some farming on his parents' ranch. Erkkila expressed a desire to return to the employ of respondent even if it involved a reduction in the pay he was currently earning.

The respondent claims that Erkkila has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Erkkila has not secured regular and substantially equivalent employment.

LUKE SERTICH, a member of the Union, entered the employ of the respondent in 1924 and worked until a general lay-off in August 1930. He was reemployed by the respondent in September 1933 and worked for the respondent until he went on strike on June 10, 1935. At the time of the strike he was a trackman, earning $5.24 per day. He served on the picket line until about a week before the termination of the strike. About the first part of July 1936 he applied for a job with the respondent. On that occasion Bateman told him he had no chance for a job. He has never tried to obtain employment with the respondent since that date.

On the basis of all the evidence we find that the respondent denied reinstatement to Sertich because he struck and engaged in concerted activities in behalf of the Union.

Since September 5, 1936, Sertich has been in the employ of the Shattuck Denn Mining Company. He started there as a miner but at the date of the hearing he was working as a timberman, earning $5.76 per day. For almost a year succeeding the cessation of the strike, Sertich was enrolled in a C.C.C. camp. At the hearing Sertich expressed a preference for his old job with the respondent over his present employment with the Shattuck Denn Mining Company.

The respondent claims that Sertich has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Sertich has not secured regular and substantially equivalent employment.

MERRELL ERNEST JOHNSON entered the employ of the Calumet & Arizona Mining Company in 1928 and worked for that concern until he was laid off at the time of the merger in 1931. He was reemployed by the respondent in 1934 as a tool nipper. He worked steadily for the respondent until he went out on strike on June 10, 1935. At the time of the strike he was working as a toplander's helper, earning $4.40 per day. Although he was not a member of

the Union at the time of the strike, he appeared on the picket line three or four times. About a week after the strike ceased he sought employment from Bateman. Bateman advised him that "* * * there is not even any use of your looking for a job" and added, "You know the reason why." That was the last time he sought employment from the respondent.

On the basis of all the evidence we find that the respondent denied reinstatement to M. E. Johnson because he struck and engaged in concerted activities in behalf of the Union.

In February or March 1936 Johnson was employed by the Shattuck Denn Mining Company. He started out as a trammer, earning $4.40 per day, but at the time of the hearing he was working as a sharpener's helper at $5.76 per day. Until Johnson was employed by the Shattuck Denn Mining Company he had been unable to find any work other than relief work in the period succeeding the strike.

The respondent claims that M. E. Johnson had obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Johnson has not secured regular and substantially equivalent employment.

GEORGE GERHARDT was first employed by the respondent in 1912 for about a year. He was reemployed by the respondent in 1915 and, with the exception of a brief lay-off in 1922, he worked until June 10, 1935, when he went out on strike. At the time of the strike he was working as a steel-sharpener, earning $5.24 per day. He served on the picket line until July 3, 1935. About the middle of September he applied for work with the respondent. He was one of a group of applicants who were standing outside the respondent's employment office. This group, with the exception of Gerhardt, was composed of persons who had not participated in the strike. On this occasion Bateman ad-

vised the group that there were no jobs available. Gerhardt never applied for work from the respondent thereafter.

On the basis of all the evidence, we find that the respondent denied reinstatement to Gerhardt because he struck and engaged in concerted activities in behalf of the Union.

Gerhardt was 62 years old at the time of the hearing and has obtained no employment since he went out on strike. After the termination of the strike Gerhardt was occupied only with relief work until the beginning of 1937. For a year prior to the hearing he was on direct relief because of a defective knee which bothered him when he did certain kinds of work. He has been afflicted with his knee trouble since 1913. It did not hinder the type of work he was engaged in while in the employ of the respondent.

We find that Gerhardt has not secured regular and substantially equivalent employment.[32]

WILLIAM GRAHAM, a member of the Union, entered the employ of the respondent in 1928 and left it after about a year and one-half. He was reemployed in June 1934 and worked until he went out on strike on June 10, 1935. Although he is classified on his employment record as a mucker, at the time of the strike he was working as a pocket man, earning $4.40 per day. He served on the picket line throughout the duration of the strike. After the strike ceased he applied for a job from Bateman some time during the first week of September 1935. Bateman informed him that "the committee had to pass on all of the men that were hired" and that "the committee would not pass on any man that came out on strike." Bateman did not explain what committee he referred to. He did not apply for a job with the respondent thereafter.

On the basis of all the evidence, we find that the respondent denied reinstatement to Graham because he

(32) In its brief, the respondent stated that it did not contend that Gerhardt has secured substantially equivalent employment.

struck and engaged in concerted activities in behalf of the Union.

On or about November 23, 1936, Graham was employed by the Shattuck Denn Mining Company. He has been in its employ continuously since that date. At the time of the hearing he was working as a raise man for $5.48 per day. Before Graham entered the employ of the Shattuck Denn Mining Company he had been employed for about 8 or 9 months with the Boriano Mining Company in Kingman, Arizona. He also worked for the Sunshine Mining Company in Kellogg, Idaho, for several months. He left that job voluntarily because his boy was sick and he had to return home to Bisbee. For a short period immediately succeeding the termination of the strike, Graham worked on relief. Graham prefers his old job with the respondent to either his employment with the Sunshine Mining Company or his present job with the Shattuck Denn Mining Company.

The respondent claims Graham has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Graham has not secured regular and substantially equivalent employment.

WILLIAM EDWARD SHARP was first employed by the respondent in July 1929 and laid off because of a reduction in force in January 1930. He was reemployed by the respondent on June 7, 1935. Two days later he took his physical examination and he worked on June 10, 1935. The next day he went out on strike. He was employed as a blacksmith's helper but since he never went back to get his pay for the 1 day which he worked the record does not disclose his rate of pay. He was on the picket line until about August 1, 1935. About October 15, 1935, Sharp asked Bateman for a job. Bateman told him that he had no chance to get a job because of the trouble he was involved in during the strike. On another occasion in Morenci, Arizona, in September 1937, Sharp encountered Bateman and asked him

concerning his chances for a job with the respondent's mine located in Morenci. Bateman informed him that it would do no good for him to rustle there because of the trouble in which he was involved in Bisbee. That was the last time he applied for work with the respondent.

On the basis of all the evidence, we find that the respondent denied reinstatement to Sharp because he struck and engaged in concerted activities in behalf of the Union.

About October 18, 1937, Sharp entered the employ of the Alpine Mining Company near El Freida, Arizona. At the time of the hearing he was disabled and receiving compensation. There is no evidence that his injury was such as to cause more than a temporary disability. His regular work at that time, however, was as a miner at the rate of $5 per day. Starting in December 1936 he worked for a period of about 8 months as a miner with the Bonnie Mining Company at Lordsburg, New Mexico. He was paid at the rate of $5 per day, working 7 days a week. In August 1937, because his father became ill, he was summoned home. When he returned to Lordsburg he was unable to obtain reinstatement to that job. For a period of 3 or 4 months prior to entering the employ of the Bonnie Mining Company, Sharp had a job as a hod-pan operator. Between November 1935 and August 1936 he worked as a common laborer for a construction company.

The respondent claims that Sharp has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Sharp has not secured regular and substantially equivalent employment.

LESTER F. BETHEL, a member of the Union, entered the employ of the Calumet & Arizona Mining Company in 1925. After the merger he was employed by the respondent and worked continuously until June 10, 1935. At the time he went on strike he was working as a motorman at $5.24 per day. He served on the picket line until about August 20,

1935. About August 29, 1935, he requested a job from Bateman and was informed by him that "* * * the company had never expressed themselves as to what they were going to do with the striking men." He advised Bethel to return at a later date. In December 1935 Bethel again inquired of Bateman concerning the prospects of a job. Bateman informed him as follows: "You have an outstanding record signed by Harry Lavender, but I cannot make no exceptions in your case." In May 1936 Bethel met Bateman in a bus station and in response to his query was informed that union men were not yet being hired.

On the basis of all the evidence, we find that the respondent denied reinstatement to Bethel because he struck and engaged in concerted activities in behalf of the Union.

On December 5, 1936, Bethel was employed by a Southern Pacific Railroad contractor. He has worked continuously at that job until the time of the hearing. He commenced to work at a salary of $65 per month but in May 1937 was raised to $130 per month. Before he obtained this job, besides relief work, he was employed for about 6 weeks for the Tungsten Production Company as a miner. After he was laid off by that company he worked for about a week for a construction company. The job with the Southern Pacific Railroad contractor was to terminate on February 13, 1938.

The respondent claims that L. F. Bethel has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Bethel has not secured regular and substantially equivalent employment.

MICHAEL MIHELICH, a member of the Union, worked for 15½ years with the Calumet & Arizona Mining Company prior to the merger in 1931. At that time he was transferred to the respondent's pay roll and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was employed as a timberman,

earning $5.24 per day. He served on the picket line. A few days after the discontinuance of the strike he asked Bateman concerning a job and was told "No job for you." On another occasion in September 1935 his request for a job met with a similar response. He has not applied for a job since that occasion.

On the basis of all the evidence, we find that the respondent denied reinstatement to Mihelich because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing, Mihelich was not employed. After the termination of the strike he worked in a mine for a lessor for about a year. His pay on this job was in excess of $5.50 per day. He was laid off on November 18, 1937, because the mine was shut down. Since that date he has not been occupied on any job at all.

The respondent claims that Mihelich has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Mihelich has not secured regular and substantially equivalent employment.

PETE D. CARETTO, a member of the Union, completed 10 years of service with the Calumet & Arizona Mining Company prior to its merger with the respondent in 1931. At that time he was laid off until the spring of 1932 when he was reemployed by the respondent. He worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was working as a topman, earning $5 per day. Before he worked as a topman he also had worked as a miner and a cager. He served on the picket line during the course of the strike.

After the strike was over he did not apply for reinstatement because he felt it was useless to seek a job with respondent. He based this conclusion upon Bateman's statement of August 21, 1935, when Bateman informed him and the other strikers that the strikers would never work for the respondent again.

On the basis of all the evidence, we find that the respondent denied reinstatement to Caretto because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing he was working on relief work. In December 1936 he obtained a job as a miner for a lessor. He worked at this job for about 3½ months at the rate of $5 per day. He left that employment because he did not like his employer. In January 1937 he entered the employ of another lessor and worked for him for about 2½ months. Here he received a mucker's pay which was $4.40 per day. He left this job because the ground was too bad and he did not like the work there. He has been doing relief work since December 27, 1937. Shortly after the strike terminated he was employed by a dairy, working nights. He remained there only a short time because he did not care for the hours.

The respondent claims that Caretto has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Caretto has not secured regular and substantially equivalent employment.

P. C. Lytle, a member of the Union, entered the employ of the Calumet & Arizona Mining Company 4 years prior to its merger with the respondent. Thereafter he was transferred to the pay roll of the respondent and worked until he went out on strike. At the time of the strike Lytle was a repairman, earning $5.24 per day. During the first part of the strike he was in ill health and was being treated through the respondent's medical facilities. On Saturday, June 15, 1935, Lytle visited the respondent's doctor to learn the results of a "picture" which had been taken earlier in the week. He was informed by respondent's doctor at that time that the office had given orders to cease furnishing him medical attention. Lytle did not appear on the picket line at any time. After the termination of the strike, sometime in September or October 1935, Lytle spoke to H. C. Henrie

concerning a job. Henrie advised him to return the following evening for an answer. The next evening Henrie told him that nothing could be done for him. He has never applied for a job with respondent since that date.

On the basis of all the evidence, we find that the respondent denied reinstatement to Lytle because he struck and engaged in concerted activities in behalf of the Union.

In January 1936 Lytle commenced to work for the Hillside Mining Company at Hillside, Arizona, working as a miner at the rate of $4 per day, seven days a week. At the end of 5½ months he was rated as a repairman and earned $4.50 per day, seven days a week. After working as a repairman for 3½ months he voluntarily quit the employ of the Hillside Mining Company. On February 15, 1937, he was hired as a miner by a lessor and was paid $5.48 per day. Shortly thereafter his rating and pay were increased. On June 19, 1937, however, he was laid off because of a reduction in force. About September 1, 1937, Lytle was employed as a mining timberman by the Sullivan Mining Company at the Star Mine in Idaho. He was paid at the rate of $6.25 per day. At the end of six weeks he was injured and for a 2-week period thereafter was paid compensation. He did not apply for reinstatement with the Star Mine because he understood that his job would not be available if he wanted to go back to it. The doctor also advised him to get away from it. At the time of the hearing Lytle was occupied only by relief work in Bisbee. In addition to the work enumerated he has, since the termination of the strike, been employed at various times at other temporary jobs.

The respondent claims that Lytle has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Lytle has not secured regular and substantially equivalent employment.

JESSE EDGE, a member of the Union, was employed by e Calumet & Arizona Mining Company for 2½ years prior the merger. Thereafter he was transferred to the pay ll of the respondent and worked continuously until he ent out on strike on June 10, 1935. At the time of the rike he was working as a motorman, earning $5.24 per y. He served on the picket line until about August 15, 35. During the course of the strike, about June 22, he oke to Bateman when he went in after his pay slip. On at occasion Bateman told him that if he did not return work that he would never work for the company again. ecause of that statement Edge has never applied for a b with the respondent since that occasion.

On the basis of all the evidence, we find that the respondt denied reinstatement to Edge because he struck and gaged in concerted activities in behalf of the Union.

Since July 23, 1937, Edge has been in the employ of the hattuck Denn Mining Company. He is working there as a iner earning $5.48 per day. Prior to his employment with e Shattuck Denn Mining Company he was occupied only relief work and other temporary employment.

The respondent claims that Edge has secured regular d substantially equivalent employment. For the reasons t forth in our discussion of Hargus, we find that Edge has ot secured regular and substantially equivalent employent.

FRANK PETERSON, a member of the Union, was employed the Calumet & Arizona Mining Company from February 22 to February 1930. He was reemployed by the respondt as a mucker in January 1933, and worked continuously til he went out on strike on June 10, 1935. Shortly before e occurrence of the strike he was working as a miner, rning $5 per day. He served on the picket line. About week after the discontinuance of the strike Peterson plied for reinstatement. Bateman informed him, howver, that the respondent had not yet decided how it was

going to dispose of the strikers. Ten days or two weeks after this occurrence, Peterson again sought employment from Bateman and again was refused.

On the basis of all the evidence, we find that the respondent denied reinstatement to Peterson because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Peterson was employed as a laborer earning $4 per day. He has held that job since December 20, 1937. The work, however, is not steady work and he averages only about 4 days per week of work. For the most part since the termination of the strike, Peterson has held only relief jobs or temporary jobs as a common laborer.

We find that Peterson has not secured regular and substantially equivalent employment.[33]

BEN H. STRINGER, a member of the Union, was in the employ of the Calumet & Arizona Mining Company for 4 years prior to the merger with the respondent. He was reemployed by the respondent as a mucker in June 1934, and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was still working as a mucker but was receiving a miner's pay. He served on the picket line. A few days after the termination of the strike, Stringer asked Bateman for a job but was turned down. He again attempted to get a job with the respondent in December 1937, but was informed that the respondent was laying off men during that period.

On the basis of all the evidence, we find that the respondent denied reinstatement to Stringer because he struck and engaged in concerted activities in behalf of the Union.

Except for 18 days' work for the Shattuck Denn Mining Company in the spring of 1936, Stringer has been on relief since the termination of the strike.

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(33) In its brief the respondent states that it does not contend that Peterson has secured substantially equivalent employment.

The respondent claims that Stringer has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Stringer has not secured regular and substantially equivalent employment.

GEORGE C. ROHRER, a member of the Union was employed for 3 years by the Calumet & Arizona Mining Company prior to the merger. Thereafter he was transferred to the pay roll of the respondent as a mucker and worked until June 10, 1935, when he went out on strike. At the time of the strike he was working as a motorman, earning $5.24 per day. He served on the picket line during the course of the strike. About 2 weeks after the strike ceased he applied for a job from Bateman who said: "No, I can't give you a job." He has not applied for employment with respondent since that time.

On the basis of all the evidence, we find that the respondent denied reinstatement to Rohrer because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Rohrer was employed on relief work. Except for an occasional day's work on a farm he has been continuously occupied with relief work since the termination of the strike.

We find that Rohrer has not secured regular and substantially equivalent employment.[34]

CLYDE BIGELOW first entered the employ of the respondent in 1920 and thereafter worked intermittently for the respondent until 1932. In January 1934 he was reemployed by the respondent and worked steadily thereafter until he went out on strike on June 10, 1935. At the time of the strike he was working as a miner, earning $5 per day. Although he was not a member of the Union he went out on strike. He did not appear on the picket line. After the strike was discon-

(34) In its brief the respondent states that it does not contend that Rohrer has secured substantially equivalent employment.

tinued he applied for work with the respondent in September 1935. Bateman informed him that they had not yet reinstated any of the striking miners. The next instance when he sought employment with the respondent was in December 1936. In response to his query concerning a job Bateman said "we ain't going to reinstate any of the men," and informed him that there was no use of his rustling again. Bigelow has not applied for a job with respondent since that date.

The respondent moved to dismiss the complaint as to Bigelow on the ground that he was unemployable. The record nowhere discloses that Bigelow's alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

The respondent also moved to dismiss the complaint as to Bigelow on the ground that he was not a member of the Union at the time he joined the strikers. This contention is without merit for the reasons heretofore stated in our consideration of the case of Wynn.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Bigelow because he struck and engaged in concerted activities in behalf of the Union.

A resume of the work on which Bigelow was employed since the cessation of the strike follows: He worked on relief for several months and also worked on several odd jobs. He obtained employment for about a month as a laborer on a construction gang. He then got a job in a gold mine in California which he left at the end of two months because of a disagreement over a contract with the company. In February 1937 he returned to Bisbee and was employed as a cager and shaftman in a lessor's mine. After about 4 months he was laid off. At the time of the hearing Bigelow was employed at a hardware store. In the 3 months prior to the hearing he did not average over $20 per week in

wages, although he earned a considerably larger amount in the period before that.

About 7 or 8 months before the hearing Bigelow sought employment at the Shattuck Denn Mining Company. He was rejected, however, on the ground that the medical examination disclosed that he was afflicted with silicosis. About 5 months before the hearing he was again examined with the same result on the medical examination. His application was again rejected by the Shattuck Denn Mining Company on the ground that he could not pass the medical examination. Bigelow declared, however, that he would like to go back to work under ground again.

The respondent claims that Bigelow has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Bigelow has not secured regular and substantially equivalent employment.

J. M. Morris, a member of the Union, was employed 5 years by the Calumet & Arizona Mining Company prior to the merger. After the merger he was transferred to the pay roll of the respondent and worked steadily until he went out on strike on June 10, 1935. At the time of the strike he was working as a powderman, earning $5 per day. He served on the picket line every day for about 2 weeks after the commencement of the strike. The only time that Morris applied for work with the respondent after the cessation of the strike was about October 1, 1935. Bateman questioned him as to when he had previously worked for the Company and after obtaining the information told him that there was "nothing doing."

The respondent moved to dismiss the complaint as to Morris on the ground that he was unemployable. The record nowhere discloses that Morris' alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Morris because he struck and engaged in concerted activities in behalf of the Union.

Since the termination of the strike, other than relief work, Morris has had only temporary jobs. A little more than a year prior to the hearing he applied for a job with the Shattuck Denn Mining Company but his application was rejected on the ground that he did not pass the medical examination. He feels, however, that his physical condition is adequate for work under ground. Although he was denied employment by the Shattuck Denn Mining Company on the ground that he could not satisfactorily pass the medical examination to which they subjected him, there is no evidence upon which we can base a conclusion that Morris would have been unable satisfactorily to meet the physical requirements laid down by the respondent.

We find that Morris has not secured regular and substantially equivalent employment.[35]

H. D. Edge, a member of the Union was employed as a mucker by the respondent in January 1924, and worked continuously until he went out on strike on June 10, 1935. At the time of the strike he was working as a miner, earning $5 per day. He served on the picket line. He did not apply for a job with the respondent until October 1937 because he thought that it would be useless. Several of the other persons out on strike had, to his knowledge, applied for employment and they had been unsuccessful. On this occasion Berlendis, the employment agent who replaced Bateman, informed him that he was not employing anybody at that time.

The respondent moved to dismiss the complaint as to Edge on the ground that he was unemployable. The record nowhere discloses that Edge's alleged disability was the

(35) In its brief the respondent states that it does not contend that Morris has obtained substantially equivalent employment.

reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to H. D. Edge because he struck and engaged in concerted activities in behalf of the Union.

At the time of the hearing Edge was employed on relief work. Other employment which Edge had after the strike includes approximately 5 weeks' work for a stone company in April 1936. After that he obtained a job as a miner with the Molybdenum Company in Climax, Colorado. After he worked there 10 days he left that job and went into Idaho. In July 1936 his application for a job with the Sunshine Mining Company at Kellogg, Idaho, was rejected on the ground that the doctor's examination revealed that he was afflicted with silicosis. In October 1936 he was employed as a miner by a lessor in the Bisbee district. He worked continuously for the lessor until April 1937 when he was injured. He returned to work for the lessor for a few days and then was laid off. He is of the opinion that he is physically able to do the work required of a miner.

The respondent claims that H. D. Edge has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Edge has not secured regular and substantially equivalent employment.

HENRY WATERS, a member of the Union, was first employed by the respondent in 1927. He worked intermittently for the respondent until he was laid off in 1931 because of a reduction in force. In January 1934 he was reemployed by the respondent and worked steadily until he went out on strike on June 10, 1935. At the time of the strike he was employed as a miner earning $5 per day. He served on the picket line. He did not apply for a job with the respondent until December 1936 because he knew of other men in a

position similar to his whose applications had been rejected by the respondent. In December 1936, however, he asked Bateman for a job. Bateman replied that he could not do anything for him and said, "you just as well go to a union camp." That was the last time that he applied for a job with the respondent.

The respondent moved to dismiss the complaint as to Waters on the ground that he was unemployable. The record nowhere discloses that Waters' alleged disability was the reason for the respondent's failure to reinstate him, or indeed, that the respondent was even aware of this alleged disability prior to the hearing.

Upon the basis of all the evidence, we find that the respondent denied reinstatement to Waters because he struck and engaged in concerted activities in behalf of the Union.

Since he went out on strike on June 10, 1935, Waters has had no employment other than relief work. He endeavored to get a job at the Shattuck Denn Mining Company in 1937 but was rejected on the ground that he was afflicted with silicosis. Waters is of the opinion that his physical condition would not permit him to work at an inside job at mining.

We find that Waters has not secured regular and substantially equivalent employment.

GROVER CORNETT, a member of the Union, was employed by the respondent in 1929 and was laid off in 1930 when its force was reduced. He was reemployed by the respondent on June 7, 1935, to commence work on June 10, 1935. Instead of going to work on June 10, however, he went out on strike. Since he had been hired to commence work on June 10, we find that he was an employee of the respondent on that date. The fact that he joined in the strike instead of going to work can have no effect on his status as an employee. His employment card lists him as being hired to

fill the job of a mucker. He frequently served on the picket line until about a week before the strike ceased. About a week after the strike was over he asked Bateman for a job and was told there was no chance at all of his getting his job back. Apparently that is the only occasion upon which he sought employment from the respondent.

Upon the basis of all the evidence, we find that the respondent has discriminated with respect to the hire of Cornett because he engaged in concerted activities in behalf of the Union.

At the time of the hearing he was employed as a tool nipper at the Shattuck Denn Mining Company and was earning $5.48 per day. He obtained that job in May 1936 and has worked there continuously since that time. Prior to obtaining that job he had no employment other than relief work since June 1935.

The respondent claims that Cornett has secured regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that Cornett has not secured regular and substantially equivalent employment.

LEONARD GUESS, a member of the Union, was employed by the Calumet & Arizona Mining Company for 4½ years prior to its merger with the respondent. After the merger he was transferred to the pay roll of the respondent and continued to work steadily thereafter until January 14, 1935. At the time he ceased to be in the employ of the respondent he was listed as a motorman on his employment record. He left the employ of the respondent to go into the restaurant business which, however, failed after about a month. He did not serve on the picket line during the course of the strike. The first time that he applied for a job with the respondent thereafter was about 2 weeks after the strike ceased. He spoke to Bateman on this occasion and Bateman told him that he would have to "look it up"

and advised Guess to return at a later date. Four days later he reappeared and Bateman told him that he could do nothing for him because, in the words of Guess, he did not "incorporate with the company" when he had worked with them. Bateman did not enlarge upon the meaning of this statement, but Guess stated that he had a good idea of what Bateman was referring to.

In the absence of evidence that the respondent refused to hire Guess because of his union affiliation, we find that the refusal was for other reasons.

VERNON DELL CURTIS, a member of the Union, was employed by the Calumet & Arizona Mining Company for 4 years prior to the merger. After the merger he was transferred to the pay roll of the respondent and worked there continuously until June 15, 1934. At the time he was discharged he was working as a motor swamper. There is a notation on his employment record that he is a good motor swamper and mucker. About a month after he ceased to work for the respondent he sought to be reemployed but was unsuccessful. He was on the picket line all during the strike. In October or November 1935 he asked Bateman for a job and was told "There's no chance of the likes of you to get a foothold in this camp again." In the summer of 1936 he met Bateman in a public recreation parlor in Lowell and asked him concerning a job. Bateman responded "In 300 years we will give you fellows a job again."

Upon the basis of all the evidence we find that the respondent has discriminated with respect to the hire of V. D. Curtis because he engaged in concerted activities in behalf of the Union.

Other than relief work, Curtis had only temporary jobs until he was employed by the Shattuck Denn Mining Company on January 13, 1937. At the time of the hearing he was still employed with the Shattuck Denn Mining Company and was working as a powderman, earning $5.48 per day.

The respondent claims that Curtis has obtained regular and substantially equivalent employment. For the reasons set forth in our discussion of Hargus, we find that V. D. Curtis has not secured regular and substantially equivalent employment.

RICHARD JOHNSON has never been employed by the respondent. He testified as follows:

> Q. Have you ever applied for work at Phelps Dodge Corporation? A. Yes, sir.
>
> Q. When? A. In the months of January, February and March. Just after the strike.
>
> Q. That would be 1956? A. '36.
>
> Q. Any members of your family formerly employed by the Phelps Dodge Corporation? A. Yes, father and brother.
>
> Q. To whom did you apply for work? A. Mr. Bateman.
>
> * * *
>
> Q. When was the first time you spoke to him? A. In January.
>
> * * *
>
> Q. What did he say? A. He said, Well, my father and brother weren't in very good standing with the company and that there wouldn't be no chance.

Although Johnson persisted in his efforts to obtain a job with the respondent he was not successful. The record fails to disclose why Johnson's father and brother were in the bad graces of the respondent if in fact they were. Although there is a Merrell Johnson who is a complainant in these proceedings there is no showing that he is related to Richard Johnson.

Since there is no evidence that Richard Johnson was in fact denied employment because of his union activities or because of the union activities of his father and brother we

find that Richard Johnson was not discriminated against in regard to hire or tenure of employment within the meaning of the Act.

On the basis of all the evidence we find that by its refusal to reinstate or reemploy Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben J. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Henry Waters, Vernon Dell Curtis, Grover Cornett, Herschel J. Montgomery, and William Daugherty, the respondent has discriminated with respect to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

We find that the respondent has not discriminated against William Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess in regard to hire and tenure of employment within the meaning of Section 8 (3) of the Act, and the allegations in the complaint with respect to them will, therefore, be dismissed.

IV. The Effect of the Unfair Labor Practices Upon Commerce

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic,

and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

Having found that the respondent has engaged in unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act and to restore as nearly as possible the condition which existed prior to the commission of the unfair labor practices.

We have found that the respondent has discriminated in regard to the hire and tenure of employment of certain individuals named above. In accordance with our usual practice we shall order the reinstatement or the reemployment of such individuals. The respondent contends that the Board lacks power to order the reinstatement of any striker who has obtained other regular and substantially equivalent employment. We have found above that none of the strikers discriminated against has obtained other regular and substantially equivalent employment within the meaning of the Act. Nevertheless, even if any striker had obtained such employment we would, for the reasons set forth in *Matter of Eagle-Picher Mining and Smelting Company, a corporation, and Eagle-Picher Lead Company, a corporation* and *International Union of Mine, Mill and Smelter Workers Locals Nos. 15, 17, 107, 108, and 111*, still order his reinstatement by the respondent.[36] The respondent also contends that the Board lacks power to reinstate or require the employment of individuals who were not employees within the meaning of the Act at the time the discrimination against them occurred. We do not agree with this contention. For the reasons set forth in *Matter of Waumbec Mills* and *United Textile Workers of America*, we are of the opinion that the Board is empowered under Section 10 (c) of the Act to require the employment with back

(36) 16 N. L. R. B., No. 71.

pay of individuals who were not employees of the respondent but who were discriminatorily denied employment contrary to Section 8 (3) of the Act.[37]

The respondent urges that the reinstatement of the above-mentioned persons would lead to or tend to lead to a labor dispute. Five of the respondent's employees testified to the effect that they would refuse to work with any man who was on the picket line. At the hearing counsel for the respondent and counsel for the Board entered into the following oral stipulation:

> • • • for the purpose of avoiding more or less repetition of testimony, that we [respondent] would proceed, if necessary, to put on testimony of some seven or eight hundred men now employed by the Phelps Dodge Corporation substantially to the effect of the testimony given by the witnesses called since the noon recess [5 witnesses referred to above]. That would be to the general effect that they do not want to work with these men who went out on the strike in June 1935, or were on the picket line, because of the abuse, threats, and general ill feeling that was engendered at that time, and because they do not feel it either safe or desirable to work with them in the occupations in which they were engaged.
>
> In some cases for the further reason that they do not feel that they would be able to cooperate with them on the job, obtain the necessary cooperation which is required underground where men are working together; and further, that that expresses the attitude generally of the men in the employ of the

(37) See *Matter of Waumbec Mills, Inc.* and *United Textile Workers of America*, 15 N. L. R. B., No. 4, where we held an order, requiring the employment with back pay of persons who were not employees of the respondent but who were discriminatorily denied employment by the respondent within the meaning of Section 8 (3) of the Act, to be within the authority granted to the Board by Section 10 (c) of the Act which expressly permits the Board to require upon a finding of unfair labor practices ". . . such affirmative action . . as will effectuate the policies of the Act."

Phelps Dodge Corporation at the present time, that they have not requested the management to reinstate any of these men or employ them, and are not desirous that they do be employed.

We cannot but consider the difficulties of adjustment envisaged in the foregoing testimony as conjectural and insubstantial, especially in view of the lapse of time since the strike. However, even assuming that the asserted resentment of non-strikers towards strikers and picketers persists, the effectuation of the policies of the Act patently requires the restoration of the strikers and picketers to their *status quo* before the discrimination against them.

The respondent contends that Clyde Bigelow, H. D. Edge, and J. M. Morris should not be reinstated because they are unemployable. This position is predicated upon evidence adduced at the hearing that they were rejected for jobs at other mining companies on the ground that they could not pass the physical examination. Their failure to pass physical examinations to which they were subjected by other mining companies obviously does not establish that they could not satisfactorily meet the respondent's physical requirements. Accordingly, we see no valid reason for refusing, in the exercise of our discretion, to restore them to their *status quo* before the unlawful discrimination against them.

We shall therefore order the respondent to offer to all the above-mentioned persons, except Henry Waters,[38] immediate and full reinstatement to their former or substantially equivalent positions[39] without prejudice to their seniority or other rights and privileges.

(38) Henry Waters did not desire reinstatement because of his physical condition.

(39) Vernon Dell Curtis and William Daugherty were not working for the respondent on June 10, 1935, the date of the strike, but each had worked for the respondent in the past. Our Order directs their reinstatement to the positions last held or to a substantially equivalent position.

Such reinstatement shall be effected in the following manner: All employees hired after August 9, 1935,[40] shall, if necessary to provide employment to the persons to be offered reinstatement, be dismissed. If thereupon, by reason of a reduction of force since the date of the hearing[41] there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution for whom no employment is immediately available shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

We shall order the respondent to make the above-named persons, with the exception of Henry Waters, Vernon Dell Curtis, Grover Cornett, and William Daugherty, whole for any loss of pay they have suffered by reason of the respondent's discriminatory failure to hire them by January 1, 1936,[42] by payment to each of them of a sum equal to the

(40) The strikers made their first mass application for reinstatement on that date. With respect to Vernon Dell Curtis and William Daugherty, the date governing the dismissals to be effected will be the date from which their respective awards of back pay runs, which is discussed *infra*.

(41) The figures furnished by the respondent show that there was no reduction of force prior to the date of the hearing.

(42) Since it is impossible to ascertain the order in which the respondent would have reinstated the strikers if it had not discriminated against them, we shall fix a date marking the end of a period within which the respondent could reasonably have put all of them back to work. As we have found the evidence discloses that between August 9, 1935, and January 1, 1936, the respondent hired approximately 156 persons. Of this group approximately 116 were muckers and 40 were miners. By January 1, 1936, therefore, the respondent could have returned to work all of the strikers whom it discriminatorily failed to reinstate. Accordingly, back pay will be allowed from that date.

amount he normally would have earned as wages from January 1, 1936, to the date of the offer of reinstatement, less his net earnings[43] during said period, deducting, however, from the amount otherwise due to each of the said employees, monies received by said employee during said period for work performed upon Federal, State, county, municipal or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said relief projects.[44]

With respect to Henry Waters, we have found that he was afflicted with defective lungs to such an extent as to prevent his employment underground. The record simply establishes this condition as existing in 1937. In view of the vagueness of the date we shall presume that Waters' physical condition rendered him unfit for underground work on January 1, 1937. We shall order the respondent to make him whole for any loss of pay which he suffered by reason of the respondent's discriminatory failure to reinstate him by January 1, 1936, by payment to him of a sum equal to the amount he normally would have earned as wages from January 1, 1936 to January 1, 1937, less his net earnings and with similar deductions as described in the preceding paragraph.

With respect to Vernon Dell Curtis and Grover Cornett, we shall order their back pay computed from January 1, 1936[45] to the date of the offer of reinstatement but to exclude

(43) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local No. 2590*, 8 N. L. R. B., No. 51. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

(44) *Republic Steel Corporation* v. *National Labor Relations Board and Steel Workers Organizing Committee* (C. C. A. 3, decided November 8, 1939).

(45) Each of these men had made individual application for reinstatement prior to that date. See Section III B *supra*.

the period from March 16, 1938, the date of the Trial Examiner's Intermediate Report in which he recommended dismissal of the complaint as to these two persons, to the date of the Order herein. This is in accordance with our rule that the respondent could not have been expected to offer jobs to persons after it received the Intermediate Report recommending the dismissal of the complaint as to these persons.[46]

With respect to William Daugherty, in view of the fact that he was not working for the respondent at the time of the strike we shall order the respondent to make him whole for any loss of pay which he suffered by reason of the respondent's discriminatory failure to hire him by January 30, 1937,[47] by payment to him of a sum equal to the amount he normally would have earned as wages from that date to the date of the offer of reinstatement as computed above. We shall also order his back pay to exclude the period from March 16, 1938, to the date of the Order herein for the same reason as set forth above in the cases of V. D. Curtis and Cornett.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law.

1. International Union of Mine, Mill and Smelter Workers Local No. 30 is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Edgar Lewis Hargus, John Henry Key,

(46) *Matter of E. R. Haffelfinger Company Inc.* and *United Wall Paper Crafts of North America, Local No. 6*, 1 N. L. R. B. 760; *Matter of Kentucky Firebrick Company* and *United Brick and Clay Workers of America, Local Union No. 510*, 3 N. L. R. B. 455; order enforced in *National Labor Relations Board* v. *Kentucky Firebrick Company*, 99 F. (2d) 89 (C. C. A. 6).

(47) Daugherty made an individual application for employment on January 15, 1937. The record shows that 16 miners and 5 muckers who had not theretofore worked for the respondent were hired between January 15, 1937, and January 30, 1937. Accordingly, we will award Daugherty back pay from January 30, 1937, by which date he could have been reinstated if the respondent had not discriminated against him.

George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Henry Waters, Vernon Dell Curtis, Grover Cornett, William Daugherty and Herschel Montgomery, and thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. By failing to employ William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess, the respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

ORDER.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer,

Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kabastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from

the amount otherwise due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other

government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b); that it will take the affirmative action in 2 (a), (b), (c), (d), and (e) of this Order; and that the respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, as amended, be, and it hereby is, dismissed in so far as it alleges that the respondent discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess.

Signed at Washington, D. C., this 16th day of January, 1940.

J. WARREN MADDEN,
J. WARREN MADDEN,
Chairman.

EDWIN S. SMITH,
EDWIN S. SMITH,
Member.

WM. M. LEISERSON,
WM. M. LEISERSON,
Member.

(SEAL) NATIONAL LABOR RELATIONS BOARD

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

PHELPS DODGE CORPORATION, Petitioner, v. NATIONAL LABOR RELATIONS BOARD, Respondent.	No.

Stipulation.

IT IS HEREBY STIPULATED by and between Phelps Dodge Corporation, petitioner, and the National Labor Relations Board, respondent, by their respective attorneys, that in printing the transcript of the record herein none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Board Exhibit No. 1, omitting, however, the National Labor Relations Board Rules and Regulations—Series 1, as amended; all affidavits of service and return receipts; order granting extension of time within which to answer, dated January 19, 1938; and order designating Trial Examiner, dated January 25, 1938.

2. Board Exhibits Nos. 5, 24, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.

3. Board Exhibits Nos. 8, 10, 13 to 23, inclusive, 25 to 49, inclusive, and 51 to 56, inclusive, omitting, however, in each case the bottom half of the front side headed "Record of Absence," and omitting also the entire rear side.

Stipulation.

4. Unnumbered supplemental stipulation filed with the Regional Director February 17, 1938; and unnumbered stipulation on pay-roll data, dated January 11, 1939, with exhibits thereto annexed.

IT IS FURTHER STIPULATED that those exhibits not printed shall be deemed part of the record before the Court, and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

PHELPS DODGE CORPORATION
By DENISON KITCHEL
WM. E. STEVENSON
Its Attorneys.

Dated at New York, N. Y.
March 29, 1940.

NATIONAL LABOR RELATIONS BOARD
By ROBERT B. WATTS
Associate General Counsel.

Dated at Washington, D. C.,
March 30, 1940.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

PHELPS DODGE CORPORATION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Order.

Upon stipulation of the parties and due consideration having been given

IT IS HEREBY ORDERED THAT in printing the transcript of the record herein none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Board Exhibit No. 1, omitting, however, the National Labor Relations Board Rules and Regulations—Series 1, as amended; all affidavits of service and return receipts; order granting extension of time within which to answer, dated January 19, 1938; and order designating Trial Examiner, dated January 25, 1938.

2. Board Exhibits Nos. 5, 24, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67.

3. Board Exhibits Nos. 8, 10, 13, to 23 inclusive, 25 to 49, inclusive, and 51 to 56, inclusive, omitting, however, in each case the bottom half of the front side headed "Record of Absence," and omitting also the entire rear side.

ORDER

4. Unnumbered supplemental stipulation filed with the Regional Director February 17, 1938; and unnumbered stipulation on pay-roll data, dated January 11, 1939, with exhibits thereto annexed.

It is further ordered that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit.

Dated April 1, 1940.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 350

(Argued June 4, 1940. Decided July 11, 1940)

PHELPS DODGE CORPORATION, Petitioner,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

Petition to review an order of the National Labor Relations Board and request by the Board for modification and enforcement of the order. Enforcement granted in part.

Before L. Hand, Chase and Patterson, Circuit Judges

Ellinwood & Ross; Debevoise, Stevenson, Plimpton & Page, Attorneys for Petitioner.

Denison Kitchel, William E. Stevenson, of Counsel.

Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel; Laurence A. Knapp, Assistant General Counsel; Alvin J. Rockwell, Mortimer B. Wolf, Morris P. Glushien, Attorneys for Respondent.

CHASE, Circuit Judge:

This case is before us on the petition of the Phelps Dodge Corporation, a New York corporation doing business in the Southern District of New York, with its principal office in the City of New York, for the review of an order of the National Labor Relations Board requiring the reinstatement of striking employees and two others with back pay. It involves questions as to the scope of the term "employee" within the meaning of the National Labor Relations Act, 49 Stat. 449; 29 U. S. C. A. Secs. 151 et seq., of which some have already been considered by this court in National Labor Relations Board v. National Casket Co., 107 F. (2) 992.

The Board answered the petition and requested the enforcement of the order with the sole modification that the language of the notice to be posted by the petitioner to the effect that it will cease and desist from conduct prohibited be in accord with the more recent practice of the Board in that respect following the decision Art Metal Construction Co. v. National Labor Relations Board, 110 F. (2) 148. The proposed modification is that the notices state that petitioner "will not engage in conduct from which it is ordered to cease and desist in paragraph (a) and (b) of this Order * * *". This modification is now ordered as requested.

Both our jurisdiction which is based upon Sec. 10 (e) of the above Act and the interstate character of the business of the petitioner are clearly established and unquestioned.

The unfair labor practices found by the Board were based on charges filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30 and were proved to have occurred at a copper mine owned and operated by the petitioner at Bisbee, Arizona, in the summer of 1935. They consisted of refusals, because of their union affiliations or activities, to hire applicants for employment and to reinstate employees who had engaged in a strike. The Board found that the petitioner had violated Sec. 8 (1) and (3) of the Act in one or the other of these respects by discriminating against forty named men; dismissed the allegations as to five men; and ordered the petitioner to offer employment with back pay to thirty-nine of the forty together with back pay to the remaining one up to a time when he became unemployable. As the trial examiner had recommended dismissal of the complaint as to three of the men the Board ordered reinstated, no back pay was allowed them between

the date of the intermediate report of the examiner and the date of the order of the Board.

The findings that are supported by substantial evidence show the petitioner's mine at Bisbee, known as the Copper Queen Mine, was an "open-shop camp" until the Union began its attempt at organization there in September 1933. This attempt was resisted by the petitioner but the union by June 10, 1935 had a membership sufficiently large to be reckoned with, though still a small minority of the approximately 950 employees the petitioner had at work at the mine. On June 6, 1935 the petitioner discharged eight of these union men. The following evening the union voted to strike on June 10th because of such discharges and on the last mentioned date about ten per cent of the petitioner's employees stopped work and established picket lines at mine entrances. Picket lines were maintained until Aug. 24, 1935 when the strike was terminated by the union because of its failure and the picketing was discontinued.

The Board found that by June 28th the petitioner had succeeded in filling the places of all the strikers and had resumed normal operations at the mine. After that and at times before and after the strike was given up by the union on Aug. 24th, the petitioner increased the number of its employees but in doing so consistently refused to reinstate any of the strikers though they applied for reinstatement in August when the petitioner was hiring men for work similar to that for which they applied and the refusal of employment was clearly because of their union membership and activities.

After the labor trouble in June 1935 above referred to, the National Labor Relations Act became effective on July 5, 1935 but this was after the date on which the Board had found that the mine had resumed normal operations with the places of the strikers taken by other employees. From this it is argued by the petitioner that there was no current labor dispute when the Act became effective on July 5th, and consequently that its subsequent refusal to reinstate any of the strikers because they were union men was not unlawful since they were not employees within the meaning of the Act.

Though the union had, before the effective date of the Act, apparently been shown to be too weak to win the strike or even to disrupt seriously the working of the mine, we think it clear that a labor dispute still existed which was then

"current" as the Board found. That was a question of fact which we can review only to the extent of determining whether or not there was substantial evidence to support it. That there was such evidence is shown by the proof of the maintenance of the picket lines coupled with several acknowledgments by the petitioner itself after July 5th that it recognized the continued existence of the strike. Reliance is placed by the petitioner upon decisions to the effect that a strike cannot exist unless the employer has notice of definite demands to be met and given an opportunity to meet them but none of them dealt with what is a current labor dispute within the meaning of the statute controlling here and, while interesting, are presently of little help. Nor is it decisive that normal production in the mine had been attained though in Quinlivian v. Dail-Overland Co., 274 Fed. 56 it was, indeed, held in deciding a controversy involving the Clayton Act that strikers ceased to be employees after the employer had its plant in full production even though such strikers continued their efforts to maintain the strike. The definition of employee in the National Labor Relations Act is very broad and should not be narrowed to make abortive the remedial purposes of the statute. It includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment." Had the Act been effective when the strike began in June there would, of course, be no question about the retention by the strikers of their status, under the statute, as employees. The sufficiently supported finding of the Board, however, carries the labor dispute into July 5th and that is enough to make the strikers employees within the meaning of the Act when they were refused reinstatement. Jefferey-DeWitt Insulator Co. v. National Labor Relations Board, 91 F. (2) 134; Standard Lime & Stone Co. v. National Labor Relations Board, 97 F. (2) 531. See also, National Labor Relations Board v. National Casket Co., 107 F. (2) 992, 996. The question of whether there was a current labor dispute after the mine resumed normal operations with the strikers' places filled should not be confused with whether or not it would have been an unfair labor practice to refuse to re-employ the strikers after normal operations had been resumed, on the ground that that would have made necessary the discharge of the

men who had taken their places. As to whether or not an employer may lawfully refuse re-employment for that reason, see Labor Board v. Columbian Co., 306 U. S. 292 and Labor Board v. Mackay Co., 304 U. S. 333.

Some of the strikers, who were ordered reinstated, did obtain employment. Part of them were employed by the Shattuck Denn Mining Company which operated a similar mine in Bisbee only a short distance from the mine of the petitioner. They secured work of a similar nature under similar conditions at similar rates of pay; in some instances at higher wages. Though the Shattuck Denn Mining Company was smaller than the petitioner it was shown to be a steady employer of this kind of labor. There may have been some loss of seniority rights but that would doubtless often be a result of a change in employment and what that loss may have been was not adequately shown. Unless it was a substantial loss, the Board's decision to the effect that those men who were employed by the Shattuck Denn Mining Company did not at the time they went to work there obtain substantially equivalent employment cannot stand and they then ceased to be employees subject to reinstatement. Mooresville Cotton Mills v. National Labor Relations Board, 94 F. (2) 61; National Labor Relations Board v. Carlisle Lumber Co., 99 F. (2) 533. In order that this question of fact may be determined, there will be a remand to the Board for further findings upon such evidence as the parties may present.

The strikers did, in any event, lose some time because of the unfair labor practice of the petitioner in refusing to reinstate them while they were employees. It is true that the language of the Act couples reinstatement and back pay in such a way that it has been held that the latter cannot be ordered by the Board unless reinstatement is also. National Labor Relations Board v. Carlisle Lumber Co., supra. But that seems to diminish unduly the scope of the Board's broad power to take some of the economic pinch out of labor troubles. We think the Act authorizes the Board to relieve an employee from loss of pay during the time an unfair labor practice has been the cause of the loss and during which it is a sufficient reason for his then reinstatement whether he may be reinstated as of the time the order is made or not. Mooresville Cotton Mills v. National Labor Relations Board, supra.

The findings of the Board to the effect that the strikers who obtained employment other than from the Shattuck Denn Mining Company did not obtain substantially equivalent pay is supported by the evidence and the order for their reinstatement with back pay is, accordingly, upheld except in respect to the amount of back pay awarded to those who elsewhere obtained employment, not substantially equivalent, and then voluntarily relinquished that. There is no reason to suppose that Congress intended to have those who had unlawfully been deprived of their jobs maintained in idleness beyond the period when they had an opportunity to do work they were fitted to perform. They were bound to use reasonable efforts to find work and to keep employed. It is only to the extent that their earnings were diminished after they made such efforts that they are entitled to be made whole. The same rule that applies to a discharged employee who sues for a breach of contract is applicable to them. Accordingly, the amount allowed each such employee should be the difference between his actual earnings plus what he failed without excuse to earn and the amount he would have earned but for the unfair labor practices of the petitioner.

We have included among those called strikers a man named Cornett who had not worked for the petitioner for several years before the strike but who was employed on June 7, 1935, to begin work on June 10th, the day the strike began. He failed to report for work on that day and joined the picket line on the following day. It is contended that he was not an employee but we can find no substance in that argument. He was admittedly hired. That contract fixed his relationship to the petitioner regardless of whether or not he actually worked before he joined the strikers.

There were two men ordered reinstated who were not employees within our decision in National Labor Relations Board v. National Casket Co., supra. They are Daugherty who left the employ of the petitioner on Oct. 15, 1934; who never thereafter was employed by the petitioner; and who was refused employment on Jan. 15, 1937, because of his union affiliations. Another was Curtis who was discharged by the petitioner on June 15, 1934, and who, because of his union membership, was refused re-employment in 1935 after the Act became effective. For the reasons stated in the case last above mentioned we hold that these two men were not

employees and that the Board was without power to order the petitioner to offer them employment.

Though there was considerable delay both in filing the charges with the Board and in proceedings thereafter to the final order to all of which the petitioner has called out attention, we are not prepared to say on this record that it has a just grievance on that score.

One further modification of the order is, however, required. The Board ordered the petitioner to deduct from the amount otherwise due each employee awarded back pay whatever had been received during the period "for work performed upon Federal, State, county, municipal, or other work relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which applied for said work-relief projects." This part of the order went beyond the power of the Board and should be omitted. National Labor Relations Board v. Leviton Manufacturing Co. Inc., 111 F. (2) —— (C. C. A. 2) decided April 29, 1940.

The order of the Board is modified in accordance with this opinion and, as so modified, the motion for an enforcement order is granted.

L. HAND, C. J. (Concurring):

I agree that the men who were on strike on July 5, 1935, were entitled to reinstatement, though not because the dispute which caused them to quit their jobs, was "current" when the act took effect. If I were free to decide, I should hold that it was an "unfair labor practice" to discriminate against anyone, whether an "employee", or not. Section eight has five subdivisions and two of them—two and three—do not use the word. Moreover, not only does the text for that reason not require that these subdivisions shall be limited to employees, but the predominant purpose of the act as a whole requires an opposite construction. One can as effectively interfere with the rights which § 7 secured by refusing to hire as by discharging; that is, unless we interpret "employees" in § 7, as limited to persons actually employed at the moment, which would certainly mutilate the act. Nor am I moved by the argument that the employer must be free to hire whom he will. The whole purpose is to limit his liberty so far as its exercise may invade the new rights created; and I can see no greater limita-

tion in denying him the power to discriminate in hiring, than in discharging. Except for National Labor Relations Board v. National Casket Company, 107 Fed. (2) 992 (C. C. A. 2), I should therefore have sustained the order, not only as to those on strike when the "unfair labor practice" occurred, but as to the two who were not on any theory "employees" at that time. But, having taken part in that decision and my motions being then overruled, I regard it as authoritative. It is another question whether anyone who is not an "employee", is entitled to reinstatement, but that I pass, because it does not arise if it was not an "unfair labor practice" to discriminate against the two men in question.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1939

No. 350

PHELPS DODGE CORPORATION, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Order on Petition of Phelps Dodge Corporation to Review and Set Aside an Order of the National Labor Relations Board, and on Request of Board for Enforcement of its Order.

July —, 1940

Before L. Hand, Chase, and Patterson, Circuit Judges

The Phelps Dodge Corporation having petitioned this Court to review and set aside an order of the National Labor Relations Board entered January 16, 1940, the National Labor Relations Board having requested the enforcement of its order, and this Court on July 11, 1940, having filed its opinion modifying the order of the Board in certain respects and, as so modified, granting the Board's request for the enforcement of said order;

It Is Hereby Ordered that Phelps Dodge Corporation, petitioner herein, and its officers, agents, successors and assigns, shall cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other

labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act;

It Is Further Ordered that Phelps Dodge Corporation, and its officers, agents, successors and assigns, shall:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since August 9, 1935, in the manner set forth in the section entitled "Remedy" appearing in the Decision and Order of the National Labor Relations Board issued on January 16, 1940, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Milton Wynn, George Gerhardt, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Frank Peterson, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery;

(b) Make whole Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Milton Wynn, George Gerhardt, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Frank Peterson, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of petitioner's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less his net earnings during said period, and also less the net

amount which he failed without excuse to earn during said period;

(c) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Grover D. Windsor, Martin Vaclav, Montague Reed, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Moran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, William Graham, Jesse Edge, Grover Cornett, and Ben H. Stringer for any loss of pay they may have suffered by reason of petitioner's discriminatory refusal to reinstate them, during the period from January 1, 1936, to the date when they secured employment at the Shattuck Denn Mining Company, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date he obtained employment at the Shattuck Denn Mining Company, less his net earnings during said period, and also less the net amount which he failed without excuse to earn during said period;

(d) Make whole Henry Waters for any loss of pay he may have suffered by reason of petitioner's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, and also less the net amount which he failed without excuse to earn during said period;

(e) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that petitioner will not engage in the conduct from which it is ordered to cease and desist by the provisions of this order of the Court and will take the affirmative action required by said order;

(f) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of the entry of this order of the Court, what steps petitioner has taken to comply herewith;

It Is Further Ordered that the complaint, as amended, be, and it hereby is, dismissed in so far as it alleges that

petitioner discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess;

And It Is Further Ordered that that part of the case relating to reinstatement of, and any additional back pay to, the persons named in subparagraph (c) of the third paragraph of this order, be remanded to the National Labor Relations Board for purposes of determining whether said persons have, in obtaining employment at the Shattuck Denn Mining Company, suffered a substantial loss of seniority rights, the Board to make further findings upon such evidence as the parties may present and file with this Court its findings and recommendations in the manner provided in Section 10 (e) of the National Labor Relations Act.

Learned Hand, Judge, United States Circuit Court of Appeals for the Second Circuit.

Harrie B. Chase, Judge, United States Circuit Court of Appeals for the Second Circuit.

Robert P. Patterson, Judge, United States Circuit Court of Appeals for the Second Circuit.

Stamp on reverse side reads: United States Circuit Court of Appeals, Second Circuit, Filed Jul. 26, 1940. D. E. Roberts, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York:

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from I to XVIII and 1 to 936 inclusive, in 2 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Phelps Dodge Corporation, Petitioner, against National Labor Relations Board, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this first day of August, in the year of our Lord one thousand nine hundred and forty, and of the Independence of the said United States the one hundred and sixty-fifth.

D. E. Roberts, Clerk. (Seal.)

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL LABOR RELATIONS BOARD

v.

PHELPS DODGE CORPORATION

ORDER GRANTING EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

Upon motion of counsel for the National Labor Relations Board, and good cause appearing, it is ordered that the time within which the National Labor Relations Board may file a petition for writ of certiorari herein be and it is hereby extended for a period of sixty (60) days from October 26, 1940.

Harlan F. Stone, Associate Justice of the Supreme Court of the United States.

October 18, 1940.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 387

ORDER ALLOWING CERTIORARI—Filed January 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1940

No. 641

ORDER ALLOWING CERTIORARI—Filed January 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.

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AUG 30 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

MATTHEW C. FLEMING,
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Petitioner.

August 29, 1940

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1940

No. .....

PHELPS DODGE CORPORATION, *Petitioner*,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Phelps Dodge Corporation, respectfully prays that a writ of certiorari be issued to review certain portions of a decree of the United States Circuit Court of Appeals for the Second Circuit enforcing, in part, an order of the National Labor Relations Board.

Opinion Below

The opinion of said Circuit Court of Appeals, which was handed down on July 11, 1940, in a proceeding entitled *Phelps Dodge Corporation* vs. *National Labor Relations Board*, has not yet been officially reported but is printed in the Record (R. 923-930).

The Decision and Order of the National Labor Relations Board, part of which was enforced by the decree of the Circuit Court of Appeals, is reported in 19 N. L. R. B., No. 60 (1940) in a proceeding entitled *In the Matter of Phelps Dodge Corporation and International Union of Mine, Mill and Smelter Workers, Local No. 30*, and is printed in the Record (R. 837-919).

Statement of the Matter Involved

This petition involves questions arising under the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A. Section 151 et seq.), hereinafter referred to as the Act, and seeks the review of certain portions of a decree of the Circuit Court of Appeals for the Second Circuit, hereinafter referred to as the lower Court, enforcing, in part, an order of the National Labor Relations Board, hereinafter referred to as the Board.

Petitioner is engaged in the mining of mineral bearing ores at Bisbee, Arizona. After treatment at petitioner's smelter in Douglas, Arizona, all of this ore is shipped out of Arizona in interstate commerce (R. 614-620). In 1933 there was formed at Bisbee a labor organization, hereinafter called the union, and between the time of such formation and June 10, 1935, some of petitioner's employees became members. In June, 1935, petitioner had in its employ, in connection with its mining operations at Bisbee, approximately 950 persons (R. 530, 842). On June 6, 1935, petitioner discharged eight union men for cause (R. 844). On the following evening, June 7, 1935, because of these discharges the union membership voted to call a strike effective June 10, 1935 (R. 101-103, 844). No demand was made upon petitioner for the reemployment of these eight men, and petitioner was never given any notice of or statement of the reasons for the strike (R. 127-128, 657). On the morning of June 10, 1935, less than ten percent of the persons on petitioner's payroll ceased work and established picket lines (R. 101, 845).

For a period of approximately two weeks petitioner's mining operations were impaired as a result of this cessation of work, but by the end of June all of the strikers had been replaced and mining operations were normal (R. 531, 583, 584, 845). The picket lines, however, were still in existence. This was the situation which existed on July 5, 1935, when the Act went into effect.

On August 9, 1935, a committee representing the union called upon local officials of petitioner and agreed to call off the strike if petitioner would put back to work the eight men discharged on June 6 and all of those who had walked out on June 10. This was the first instance of any communication between the union and petitioner concerning any phase of the situation. On this occasion the local officials of petitioner advised the representatives of the union that the men could not be reinstated because their jobs had been filled. On August 23, 1935, a similar meeting was held at which the same proposal was made by representatives of the union and a similar reply given by the local officials of petitioner. Between August 9, 1935, and August 24, 1935, petitioner hired twenty-one new men. On August 24, 1935, the union officially terminated the strike and the picket lines were disbanded (R. 650, 654, 657, 845, 863).

With the possible exception of one or two individuals, none of the men who walked out on June 10, 1935, has been reemployed by petitioner. Of the individuals whose cases were before the Board most have at some time since August 24, 1935, made applications for reemployment to petitioner's employment agent, but none of them has been rehired. The Board found, on substantial evidence, that they were refused employment by the employment agent because of their participation in the strike. At the time of the hearing before the Board in January, 1938, the persons on petitioner's payroll numbered approximately 1,400, as compared with approximately 950 on June 10, 1935 (R. 842, 861, 863, 864).

On May 25, 1937, almost two years after the termination of the strike, the union filed charges under the Act against the petitioner alleging the commission of an unfair labor practice in refusing to "reinstate" six individuals who participated in the strike (R. 4). These charges were amended on December 18, 1937, and, as amended, included forty-seven men (R. 6-9). On January 10, 1938, the Board

issued a complaint against petitioner charging it with having engaged in unfair labor practices under subdivisions (1) and (3) of Section 8 of the Act in refusing to reinstate forty-eight individuals named therein (R. 10-27). Hearings on this complaint were held at Bisbee, Arizona, from January 27 through February 3, 1938. On March 16, 1938, the trial examiner's intermediate report was issued, and to this report petitioner filed with the Board exceptions and a supporting brief (R. 687-746). On May 5, 1938, petitioner presented oral argument to the Board, and on July 20, 1939, more than a year later, the case was reargued (R. 749, 836). The Board's Decision and Order was issued on January 16, 1940, which was approximately four and one-half years after the commission of the alleged unfair labor practices (R. 837-919).

In its Decision and Order the Board found that petitioner was guilty of unfair labor practices in systematically refusing to "reinstate" forty individuals, and ordered "reinstatement" of thirty-nine and back pay to all forty. The Board reached the conclusion of law that "the strike was a labor dispute involving a controversy over the tenure of employment of the eight union members discharged on June 8" (sic), "1935; that the strikers' work ceased as a consequence of that labor dispute which was current on July 5, 1935, the effective date of the Act; and that the strikers retained their status as striking employees on that date" (R. 862-863). The Board further concluded that "While it is true that the strikers' jobs had been filled by June 28, 1935, they occupied the status of striking employees on August 9, 1935, the date of their first mass application for reinstatement" (R. 863). Then, having found that between August 9 and August 24, 1935, petitioner hired twenty-one men but hired none of the strikers, the Board concluded that "on and after August 24, 1935, when the strike was formally ended, the strikers retained their status as employees, since between August 9, 1935, and the former date, the resumption of their status as working employees

had been discriminatorily denied them by the respondent's unfair labor practices" (R. 864).

Petitioner petitioned the lower Court to review and set aside the Board's order. The lower Court refused to enforce the Board's order of reinstatement as to two individuals on the ground that they were not employees of petitioner at the time the strike commenced, and hence no unfair labor practice was committed in refusing employment to them after the strike terminated, even though that refusal was predicated upon their strike activities (R. 928-929). The lower Court remanded the case to the Board as to twenty-one of the remaining thirty-eight individuals for further evidence and findings on the question of whether or not they had obtained "other regular and substantially equivalent employment" (R. 927). As to those twenty-one, however, the lower Court enforced the portion of the Board's order requiring the payment of back pay to them up to the time they obtained such other employment (R. 927). The lower Court further enforced the order to reinstate the other sixteen who had not obtained such employment and to pay them back pay, as well as back pay to the one other individual as to whom reinstatement was not ordered by the Board (R. 931-932). It specifically rejected petitioner's request for judicial relief from the excessive amount of the back pay award (R. 929).

This petition relates, therefore, solely to that portion of the lower Court's decree directing the payment of back pay to the twenty-one on the question of whose reinstatement the case was remanded to the Board and to that portion thereof directing reinstatement and back pay with respect to the other seventeen.

Jurisdiction

The decree of the lower Court was entered on July 26, 1940 (R. 930-933). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (43 Stat. 938; 28 U. S. C. A., Section 347).

Questions Presented

The following questions are presented by this petition:

1. Whether individuals who participate in a strike not occasioned by an unfair labor practice of their employer continue to be "employees" within the meaning of that term as defined in Section 2(3) of the Act, after the places of all strikers have been filled by other workers, operations have returned to normalcy, and all strike activities have ceased.

2. Whether it is an unfair labor practice for an employer to refuse application for a mass "reinstatement" of strikers when the strike was not occasioned by an unfair labor practice, the places of all the strikers have been filled, operations have returned to normalcy, there are insufficient new jobs available, and such "reinstatement" would necessitate the discharge of individuals hired to fill the places of the strikers, but picketing activities are still being carried on and the strike has not been officially terminated by the union;

3. Whether it is a denial to an employer of due process of law under the Fifth Amendment to the Constitution of the United States so to construe Section 2(3) referred to above as to clothe on July 5, 1935, the effective date of the Act, with the status of an "employee" an individual who, immediately prior to said date, stood in no such relationship with the employer;

4. Whether the Board has authority under Section 10(c) of the Act to order the payment of "back pay" to an individual as to whom the Board has no authority to order "reinstatement";

5. Whether an employer is entitled to judicial relief where the amounts of back pay awarded to individuals are arbitrary and excessive in view of the inexcusable delay

on the part of the union in filing charges and on the part of the Board in disposing of the case, and the employer has in no way occasioned such delay.

Reasons for the Allowance of the Writ

1. The decision of the lower Court, enforcing the Board's order of reinstatement with back pay, in holding that individuals who have participated in a strike not caused by an unfair labor practice of their employer still occupy the status of "employees" at a time when their places have been filled, the employer's operations have returned to normalcy, and all strike activities have ceased, involves the decision of an important question of federal law which has not been, but should be, settled by this Court and one which has been decided by the lower Court in a way probably in conflict with principles established by this Court in decisions relating to the same matter.

2. The decision of the lower Court, enforcing the Board's order of reinstatement with back pay, in holding that a refusal of a proposal for mass reinstatement of strikers constitutes an unfair labor practice when the places of all the strikers have been filled, operations have returned to normalcy, and there are insufficient new jobs available, but picketing activities are still being carried on and the strike has not been officially terminated by the union, involves the decision of an important question of federal law which has not been, but should be, decided by this Court and one which has been decided by the lower Court in a way probably in conflict with principles established by this Court in decisions relating to the same matter.

3. The decision of the lower Court, enforcing the Board's order of reinstatement with back pay, in holding that indviduals who went out on strike on June 10, 1935, whose places had been filled and whose employer's operations had returned to normalcy by June 28, 1935, were, on July 5, 1935, "employees" under Section 2(3) of the Act,

involves the decision of a federal question in a way probably in conflict with applicable decisions of this Court.

4. The decision of the lower Court enforcing an order of the Board for the payment of back pay without reinstatement to twenty-two persons involves a decision in conflict with a decision of the Circuit Court of Appeals for the Ninth Circuit on the same matter.

5. The decision of the lower Court in refusing to afford petitioner judicial relief from an excessive and arbitrary award of back pay involves the decision of an important question of federal law which has not been, but should be, settled by this Court.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued in the above-named cause, under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court, on a day to be designated, a transcript of the record in all proceedings had in such cause, to the end that so much of the decree enforcing the order of the National Labor Relations Board as is placed in issue by the questions presented by this petition may be reviewed and determined by this Court; that said order be set aside and reversed in such respects, and that petitioner be granted such other and further relief as may be just and proper.

Dated August 29, 1940.

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Petitioner.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1940.

No. ———

PHELPS DODGE CORPORATION,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Introduction

The opinion of the lower Court was handed down on July 11, 1940, in a proceeding entitled *Phelps Dodge Corporation* vs. *National Labor Relations Board,* and appears at pages 923-930 of the Record. It had not, at the time of the preparation of the petition, been officially reported. The Decision and Order of the Board, part of which was enforced by the decree of the lower Court, is reported in 19 N. L. R. B., No. 60 (R. 837-919). The text of the sections of the Act involved in the petition is set forth in the appendix to this brief. An explanation of the matter involved and the basis for invoking the jurisdiction of this Court are set forth in the foregoing petition. The following argument follows in numerical sequence the questions presented in the petition.

ARGUMENT.

1. Where, following a strike not caused by an unfair labor practice, the places of the strikers have been filled, the operations of the employer have become normal, and the strike has been officially terminated, the individuals who participated in such strike cease to be "employees" within the meaning of that term as defined in Section 2(3) of the Act.

The lower Court states in its opinion that "The sufficiently supported finding of the Board * * * carries the labor dispute into July 5th and that is enough to make the strikers employees within the meaning of the Act when they were refused reinstatement" (R. 926). To be sure, the proposal for mass "reinstatement" was made before the strike was officially called off by the union, but it was refused because the places of the strikers had been filled and there were not sufficient new jobs available to permit such mass "reinstatement" (R. 845). The discriminatory refusals to "reinstate" upon individual applications for employment all occurred, however, after August 24, 1935, the date upon which the union officially terminated the strike. The lower Court has held that the individuals involved were "employees" at the time of such discriminatory refusals.

This Court has not decided the question of when an individual on strike ceases to be an "employee" under Section 2(3) of the Act. It has clearly indicated, however, that individuals who participate in a strike not occasioned by an unfair labor practice lose their status as employees when their employer has resumed normal operation of his plant with a full complement of workers.

National Labor Relations Board vs. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 83 L. Ed. 660 (1939).

The Board itself has specifically held on two occasions that where strike activities have ceased such individuals are not to be considered as "employees" in determining controversies over representation under Section 9 of the Act.

In the Matter of Standard Insulation Company, Inc., 22 N. L. R. B., No. 46, 6 L. R. R. 267* (1940); *In the Matter of Standard Lime & Stone Co.*, 17 N. L. R. B., No. 7, 5 L. R. R. 293 (1939).

This Court has held that under Section 10(c) of the Act the Board's authority to reinstate is limited to those who occupy the status of "employees."

National Labor Relations Board vs. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 83 L. Ed. 627 (1939).

Petitioner respectfully submits that the decision of the lower Court on this question to the effect that these individuals continued to be "employees" of petitioner after the strike had been terminated and that as such they were subject to the Board's authority to reinstate involves an important question of federal law which should be settled by this Court. The Act, although providing administrative redress for unfair labor practices, at the same time preserves the right to strike. It does not, however, petitioner respectfully maintains, remove from labor organizations the risk of losing strikes and suffering the consequences of taking such direct action at least when such action is not occasioned by unfair labor practices on the part of employers. Petitioner submits that a decision by this Court on this important question whereby both labor and industry would be advised of their respective rights and liabilities under the Act would serve greatly to diminish the number of unjustifiable labor disputes which presently operate to impede the free flow of commerce between the several states.

---

* Labor Relations Reporter, published by The Bureau of National Affairs, Inc., Washington, D. C.

2. It is not an unfair labor practice for an employer to refuse a proposal for mass "reinstatement" of strikers when the strike was not occasioned by an unfair labor practice, the places of all the strikers have been filled, operations have returned to normalcy, there are insufficient new jobs available, and such "reinstatement" would necessitate the discharge of individuals hired to fill the places of the strikers, but picketing activities are still being carried on and the strike has not yet been officially terminated by the union.

The foregoing statement is one of the situation which on the Board's own findings existed on August 9 and August 23, 1935, when the union representatives proposed to the petitioner that they would call the strike off if petitioner would "reinstate" the eight men discharged on June 6th and all of the approximately ninety-five individuals who went out on strike on June 10th. The Board found the rejections of this proposal, in the light of petitioner's hiring twenty-one new men between August 9th and August 24th, an unfair labor practice. The lower Court by enforcing the Board's order has approved that finding.

The lower Court's decision is in direct conflict with the principle declared by this Court to the effect that where a strike has not been caused by an unfair labor practice an employer has not, under the Act, lost the right to protect and continue his business by supplying places left vacant by strikers and is not bound to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment.

> *National Labor Relations Board* vs. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, [illegible], 82 L. Ed. 1381, 1390 (1938).

The lower Court's decision in this respect also involves an important question of federal law which has not, but

should be, settled by this Court. When, under the Act, does a labor dispute cease to be "current"? The effect of the lower Court's decision in this case is to place in the hands of labor organizations, no matter how futile and hopeless their strikes may turn out to be, the power to render such disputes "current" or terminated, as they see fit. When the places of all strikers have been filled, operations are normal, and the controversy, for all practical purposes, has reached an end, individuals may, by continuing certain outward manifestations of a strike, such as picketing, maintain the currency of a labor dispute long after its substance has fled and thereby afford to themselves, as "employees", the protection of the Act for an unlimited period of time. This, petitioner respectfully submits, is the effect of a decision in this case that the individuals involved in this case were "employees" of petitioner, and, as such, the objects of discrimination on August 9, 1935.

Petitioner suggests that such a decision involves a question bearing so vitally on present day industrial relations in this country as to render its prompt settlement by this Court a matter of great national importance.

3. The individuals involved in this case were not employees of petitioner at the time the Act became effective and a decision that they became such by virtue of the provisions of the Act denies to petitioner the due process of law vouchsafed to it by the Fifth Amendment.

The decision of the lower Court in giving a retroactive effect to the Act is in conflict with applicable decisions of this Court.

Fullerton-Krueger Lumber Co. vs. *Northern Pacific Railway Co.*, 266 U. S. 435, 69 L. Ed. 367 (1925);

Brewster v. *Gage*, 280 U. S. 327, 74 L. Ed. 457 (1930).

Even before the enactment of the Act the courts recognised the fact that an individual by going on strike did not thereby terminate entirely the employer-employee relationship and become a total stranger to his former employer. It was generally held that, at least for some period of time, the employer-employee relationship continued to exist and the individual assumed the status of a "striking employee". The courts consistently held, however, that such status was removed when the places of all strikers had been filled and the employer had resumed normal operations.

Quintivan vs. *Dail-Overland Co.*, 274 Fed. 56 (C. C. A. 6th, 1921);

Dail-Overland Co. vs. *Willys-Overland, Inc.*, 263 Fed. 171 (D. C. Ohio, 1919);

West Allis Foundry Co. vs. *State*, 202 N. W. 302 (Sup. Ct. Wis., 1925);

M. Steinert and Sons Co. vs. *Tagen*, 93 N. E. 584 (Sup. Jud. Ct. Mass., 1911).

The Board has found in the instant case that the strikers' places had been filled and operations were normal by June 28, 1935 (R. 845). The individuals who went on strike were, therefore, no longer "striking employees" of petitioner when the Act became effective. Cf. *National Labor Relations Board* vs. *Carlisle Lumber Co.*, 94 Fed. (2d) 138 (C. C. A. 9th, 1937), cert. denied 304 U. S. 575, 82 L. Ed. 1539 (1938), and *Jeffery-De Witt Insulator Co.* vs. *National Labor Relations Board*, 91 Fed. (2d) 134 (C. C. A. 4th, 1937), cert. denied 302 U. S. 731, 82 L. Ed. 565 (1937). To hold that on July 5, 1935, the effective date of the Act, they became "employees" of petitioner gives to the Act a retroactive operation and is in direct conflict with the decisions of this Court bearing on the interpretation of statutes.

The lower Court's decision in enforcing the Board's order requiring petitioner to "reinstate" these individuals, who had become total strangers, in a legal sense, to peti-

tioner before the Act became effective, is a decision to the effect that under the Act the Board has authority to order petitioner to *hire* and pay back pay to persons to whom employment was refused because of union activities. As such it constitutes a denial of due process of law and is in direct conflict with applicable decisions of this Court.

National Labor Relations Board vs. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893 (1937);

Associated Press vs. *National Labor Relations Board*, 301 U. S. 103, 81 L. Ed. 953 (1937);

Coppage vs. *Kansas*, 236 U. S. 1, 59 L. Ed. 441 (1915);

Adair vs. *United States*, 208 U. S. 161, 52 L. Ed. 436 (1908).

4. The Act does not permit the Board to award back pay without reinstatement.

The lower Court's decision enforcing the Board's award of back pay without reinstatement to twenty-two of the persons involved in this case is in direct conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit on the same question in *National Labor Relations Board* vs. *Carlisle Lumber Co.*, 99 Fed. (2d) 533, 537 (C. C. A. 9th, 1938).

5. Petitioner is entitled to judicial relief from an excessive and arbitrary award of back pay.

A period of four and a half years elapsed between the commission of the alleged unfair labor practices in this case and the issuance of the Board's Decision and Order. Almost two years passed before the union filed charges and thereafter it took the Board over two and a half years to make final disposition of the case. Throughout this period of time petitioner in no way caused the delay and was helpless to speed up the final determination of its rights

and liabilities. During this whole time back pay, if finally awarded, was accumulating in large amounts. The lower Court's decision in refusing to grant to petitioner any relief under such circumstances involves an important question of federal law which has not been, but should be, settled by this Court.

See *National Labor Relations Board* vs. *National Casket Co., Inc.*, 107 Fed. (2d) 992 (C. C. A. 2nd, 1939);
Matter of Crowe Coal Co., 9 N. L. R. B. 1149 (1938);
Matter of Inland Lime and Stone Co., 8 N. L. R. B., 944 (1938);
Matter of Condenser Corporation of America, 22 N. L. R. B., No. 16, 6 L. R. R. 453 (1940);
Matter of Phillips Petroleum Co., 24 N. L. R. B., No. 23, 6 L. R. R. 560 (1940).

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APPENDIX

National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A. Section 151 et seq.):

Section 2(3):

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

Section 10(c):

> " * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * * "

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PHELPS DODGE CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Second Circuit entered on July 26, 1940 (R. 930–933), insofar as that decree set aside and refused to enforce, or modified, in certain respects herein stated, an order of the Board issued against Phelps Dodge Corporation.[1]

[1] Phelps Dodge Corporation has filed a petition for certiorari, No. 387, this Term, which seeks to review the decree below insofar as it enforced the Board's order. We regard the questions raised by the present petition as entirely distinct from those raised by the petition for the corporation, and have filed a brief in opposition to that petition.

The Solicitor General, on behalf of the Board, also prays that if this petition is granted this case be set for argument with *Continental Oil Company* v. *National Labor Relations Board*, No. 413, this Term.

OPINIONS BELOW

The opinion and concurring opinion of the court below (R. 923–930) are reported in 113 F. (2d) 202. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 837–919) are unreported.

JURISDICTION

The decree of the court below (R. 930–933) was entered on July 26, 1940. An order extending the time within which to file a petition for a writ of certiorari for sixty days from October 26, 1940, was signed by a justice of this Court on October 18, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether a denial of employment, because of union membership and activity, to persons who are not "employees" as that term is defined in Section 2 (3) of the National Labor Relations Act, constitutes a violation of Section 8 (3) and (1) of the Act; and, if so, whether, on finding that such persons would have been employed except for their

union membership and activity, the Board may, under Section 10 (c), require that they be employed with back pay.

2. Whether under Section 10 (c) of the Act the Board may order the reinstatement or reemployment of persons who were discriminated against in violation of Section 8 (3) and (1) while occupying the status of "employees" as defined in Section 2 (3), but who thereafter obtained "other regular and substantially equivalent employment" within the meaning of the latter section.

3. Whether the Board, in making a back-pay award, is required to provide for the deduction of amounts which the recipient could have earned, but did not.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order (R. 837–919). The facts, as found by the Board and as shown by the evidence, may be summarized as follows:[2]

Respondent, a large producer of copper ore, is extensively engaged in interstate commerce (R. 840–843; R. 614–620, 675–677). On June 10, 1935,

[2] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

the International Union of Mine, Mill and Smelter Workers, Local No. 30, a labor organization herein called the Union, called a strike and began to picket respondent's mine because respondent had discharged some of its members (R. 844–845; R. 101–102, 174, 193, 530, 592–593, 645–647). The strike and picketing continued until August 24, 1935, when the Union voted to terminate the strike and disbanded the picket line (R. 845, 848; R. 101, 108, 159, 174–175, 219, 292, 367, 397, 648, 650–659, 669).

Although the strike at first caused a curtailment of respondent's production (R. 845; R. 663, 583–584), by June 28 respondent had succeeded in replacing all the strikers and had resumed normal operations (R. 845; R. 530–531, 538, 584–585). Subsequently, between August 9 and the termination of the strike on August 24, and at various times thereafter, respondent hired more than 2,000 additional employees (R. 859, 860, 863; R. 750–793). In so doing, respondent consistently refused to take back any of the strikers, because of their strike and union activities, although they applied to respondent for reinstatement on three separate occasions between August 9 and August 24 (R. 845–848, 850–852, 855–856; R. 104–108, 112–115, 159–160, 175–176, 199–200, 207–208, 400, 654–655, 657–658) and numerous times thereafter (R. 845, 852–856, 861, 864, 870–905; R. 165–166, 170–171, 176, 181–182, 213, 219, 228–229, 232–233, 236–237, 255, 262, 266, 268–269, 273, 287, 291–292, 299, 303–304, 307,

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Respondent likewise refused, because of their membership and activity in the Union, to hire two other persons, Vernon Dell Curtis and William Daugherty, whose employment with respondent had terminated prior to the beginning of the strike (R. 868–870, 906; R. 247–250, 279–281, 527).

The Board found that, absent discrimination, respondent would have taken back Curtis and the 38 strikers named in the Board's order by January 1, 1936, and would have rehired Daugherty by January 30, 1937 (R. 860–861, 912–914; R. 750–756, 773–774).

Upon its evidentiary findings, the Board concluded that the 38 strikers ceased work as a consequence of and in connection with a labor dispute which was "current" when the Act took effect on July 5, 1935, that they therefore remained "employees" as defined in Section 2 (3) of the Act (R. 862–864), and that respondent's discriminatory re-

[3] During the first week of the strike, respondent's employment manager received explicit instructions, which were never changed, to "go slow" in reinstating any of the strikers (R. 846; R. 142, 535). At the hearing, respondent's assistant general superintendent, H. C. Henrie (R. 658), conceded that from the time of the strikers' first application on August 9 it was respondent's "policy" not to "put those men back to work" (R. 599–600).

fusal to reinstate the strikers, or to consider them for reinstatement, to positions available between August 9 and the end of the strike on August 24, or to the positions which became available thereafter, violated Section 8 (3) and (1) of the Act (R. 862–864). The Board further held, in the alternative (R. 864–865), that even if the strikers were no longer "employees" within Section 2 (3) at the time of the discrimination against them, respondent's denial of employment to them, as well as to Curtis and Daugherty who concededly were merely former employees, violated Section 8 (3) and (1).

Prior to the hearing, 21 of the 38 strikers obtained employment with Shattuck Denn Mining Company;[4] the Board found that neither these strikers (R. 870–871, 909; R. 85, 94–95, 448, 452, 621–644) nor any of the other strikers (R. 867–868, 877–880, 882–883, 889–904, 909; R. 243–246, 253–265, 272–277, 302–319, 362–366, 375–384, 387–419, 424–438, 453–471, 478–481) had secured "other regular and substantially equivalent employment" within the meaning of Section 2 (3). The Board also held, in the alternative, that if any of the strikers had obtained such employment, it would nevertheless order their reinstatement or reemployment in order to effectuate the policies of the Act (R. 909).

The Board's order required respondent to cease and desist from its unfair labor practices; to offer

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[4] Their names are set forth in paragraph (c) of the court's decree (R. 932).

reinstatement [5] with back pay to Curtis, Daugherty, and 37 of the 38 strikers; to make whole the remaining striker (who did not desire reinstatement) for any loss of wages suffered by him up to the date when he became unemployable; to reimburse governmental agencies for work-relief payments to the 40 men; and to post notices (R. 915–919).

Thereafter, respondent filed a petition in the court below to review and set aside the Board's order (R. i–viii). The Board answered, requesting enforcement of its order (R. xi–xvii).

The court sustained the Board's findings and order except in the following respects (R. 923–929): (1) It held, following its earlier decision in *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992, that although Curtis and Daugherty had been denied employment because of their union affiliations, the Board was without power to order their employment or reimbursement for lost pay, because they were not "employees" as defined in Section 2 (3) at the time they suffered discrimination; (2) it held that the Board was without power to order the reinstatement of persons who, after suffering discrimination while "employees" under Section 2 (3), obtained other regular and substantially equivalent employment, and that the findings that the strikers employed at Shattuck Denn had not secured such employment were un-

[5] It is clear that in using the term "reinstatement," the Board intended that it be read as encompassing also "reemployment" and "employment" (See R. 909–910).

supported by the evidence;[6] (3) it held that in computing the amount of back pay awarded to each individual, there must be deducted the amount which he "failed without excuse to earn."[7] Judge Learned Hand filed a concurring opinion (R. 929–930) stating that except for the *National Casket* decision, *supra*, he would have held that all of the individuals involved, whether or not they were "employees" within Section 2 (3), were discriminated against in violation of the Act. On July 26, 1940, the court entered a decree in accordance with its opinion (R. 930–933).

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[6] The court remanded the case to the Board for the adducing of additional evidence concerning the equivalence of the Shattuck Denn employment (R. 927). While we think the court's holding that the findings of nonequivalence were unsupported is erroneous, we do not seek review of its decision upon the facts, which are peculiar to this case. In the view we take, the Board's power to order the reinstatement of persons who have obtained equivalent employment—a power which the Board purported to exercise alternatively in this case (*supra*, p. 6)—is sufficient alone to support the reinstatement order, and hence the remand was error and should be reversed.

[7] While the opinion might be read as meaning that such deduction was required only in the case of persons who obtained but voluntarily relinquished other employment (R. 928), the court's decree, settled after notice, is not so limited; it provides in the case of every individual for the deduction noted in the text (R. 931–932).

In addition to the modifications above noted, the court also eliminated the provision for reimbursement of governmental relief agencies, and, on request of the Board, modified the notices provision (R. 929, 924). The Board, of course, does not seek review of the decision in these respects. *Republic Steel Corp.* v. *National Labor Relations Board*, No. 14, this Term, decided November 12, 1940.

REASONS FOR GRANTING THE WRIT

1. Although the court below approved the Board's findings that Curtis and Daugherty were denied employment because of their union membership and activity, it held that the Board was without power to order their employment or reimbursement for lost pay. While the opinion in terms refers only to the Board's remedial power, it is apparent from the court's citation of, and express adherence to, its earlier decision in *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992, that the court also held that a discriminatory denial of employment because of union affiliations does not violate the Act (R. 928–929). On both points the decision below is in direct conflict with the decision of the Circuit Court of Appeals for the First Circuit in *National Labor Relations Board* v. *Waumbec Mills, Inc.*, 114 F. (2d) 226. Furthermore, we think that, as stated in the *Waumbec Mills* opinion, the construction put on the Act by the court below is contrary both to the plain terms of the Act and its meaning as disclosed by its legislative history, and would open the door to wide use of the union blacklist, historically one of the most effective means of interfering with employee self-organization.

The holding of the court below that the strikers who secured other regular and substantially equivalent employment within the meaning of Section 2 (3), could not be ordered reinstated by the Board, is likewise in conflict with the *Waumbec*

Mills decision. If persons who have never been "employees" may be ordered employed, it follows that the Board may order reinstated or reemployed persons who were "employees" at the time they were discriminated against, but who thereafter obtained other equivalent employment.

Furthermore the decision below is in probable conflict with the decision of this Court in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. There the Board contended that its order requiring the reinstatement of persons who went on strike as a result of unfair labor practices and were thereafter discharged for seizing the employer's premises and engaging in acts of violence, was within its power because (1) the discharges did not terminate employee status for purposes of Section 10 (c), and (2) in any event, the Board was not limited to "reinstatement of employees" but was empowered, by the broader grant contained in Section 10 (c), to require the reemployment of former employees (see 306 U. S. at 252–253, 257). After deciding the first point against the Board and determining that the strikers ceased to be "employees" when they were discharged (pp. 254–257), the majority opinion proceeded to dispose of the second point, not on the ground that the Board could require only "reinstatement of employees," but merely on the ground that the reemployment order would not, in the circumstances of that case, "effectuate the policies of the Act" (pp. 257–258). The Court

thus plainly intimated that the Board may order "reemployment" where such an order will effectuate the policies of the Act.[8] Compare *National Labor Relations Board* v. *Waumbec Mills, Inc.*, 114 F. (2d) 226, 235 (C. C. A. 1st).

The decision below is, moreover, in conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit in *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 485, certiorari granted, No. 413, this Term. There the court held that an employee discriminated against in violation of Section 8 (3) continued to be an "employee" for the remedial purposes of Section 10 (c) whether or not he obtained equivalent employment after the discrimination. It seems plainly desirable that the writ be granted in this case, and that the case be set for argument together with the *Continental Oil* case, so that the related questions which are here presented can be considered and determined.

2. The court below modified the Board's back-pay award to provide for deduction of amounts

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[8] That this intimation was not accidental is emphasized by the separate opinion of Mr. Justice Stone. He thought that the Court should hold that the Board's power was limited to "reinstatement * * * of employees" and should, on that basis alone, set aside the order as to the men discharged by their employer (pp. 263–265). Whether the reemployment order should be considered on its merits and enforced or rejected according to whether it was or was not "such affirmative action * * * as will effectuate the policies of the Act" thus constituted the chief point of difference between the majority and Mr. Justice Stone.

which each recipient might have earned, but did not (R. 931-932). The court held that the men "were bound to use reasonable efforts to find work and to keep employed. It is only to the extent that their earnings were diminished after they made such efforts that they are entitled to be made whole" (R. 928). This holding is in direct conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 539-540, certiorari denied, 306 U. S. 646. Further, the decision below would place upon the Board the impossible burden of inquiring, in each case, into the intensity and good faith of the efforts made by each victim of discrimination to support himself while the proceeding against his employer ran the long course of litigation before the Board and the courts. We do not believe that it was the intent of Congress to preclude effective administration of the Act by requiring the Board in each case to dissipate its energies in time-consuming and speculative inquiries into earnings which were not made but were arguably possible.

CONCLUSION

The holding of the court below on each of the questions herein presented is in conflict with decisions of other circuit courts of appeals. Further, those questions are of substantial public importance in the administration of the Act. It is there-

fore respectfully submitted that this petition for a writ of certiorari should be granted.

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Solicitor General.

ROBERT B. WATTS,
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DECEMBER 1940.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Secs. 152, 157, 158, 160) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 10. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

Nos. 387 and 641

PHELPS DODGE CORPORATION, *Petitioner,* *vs.* NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 387
NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* PHELPS DODGE CORPORATION, *Respondent.*	No. 641

BRIEF FOR PHELPS DODGE CORPORATION

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1940

Nos. 387 and 641

PHELPS DODGE CORPORATION, *Petitioner,* *vs.* NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 387
NATIONAL LABOR RELATIONS BOARD, *Petitioner,* *vs.* PHELPS DODGE CORPORATION, *Respondent.*	No. 641

BRIEF FOR PHELPS DODGE CORPORATION

Jurisdiction

These cases come before the Court on writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit granted on January 13, 1941 (— U. S. —, 85 L. Ed. 390), for the purpose of reviewing certain portions of a decree of the said Circuit Court of Appeals enforcing, modifying and setting aside, in part, an order of the National Labor Relations Board (R. 930, 933). The opinion of the court below is reported in 113 Fed. (2) 202 (R. 923, 930). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (43 Stat. 938; 28 U. S. C. A., Sec. 347).

Form of Brief and Explanation of References

Pursuant to a stipulation between the parties to these cases each is filing a single brief containing the arguments in favor of the propositions presented in its petition for certiorari and against the propositions presented in the petition of the other party. As hereinafter used the word "Company" refers to Phelps Dodge Corporation, the word "Board" refers to the National Labor Relations Board, the term "lower court" refers to the United States Circuit Court of Appeals for the Second Circuit, and the word "Act" refers to the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 429, 29 U. S. C. A., Sec. 151 et seq.).

Statement of the Case

(a) *History*

The Company and its subsidiaries are principally engaged in the mining, milling, smelting, refining and fabricating of copper and in the marketing of finished copper products. These operations are extensive and occur in several states (R. 614, 620). No contention is made that the Company's business is not within the jurisdiction of the Board.

For many years the Company has been engaged in the mining of mineral bearing ores at Bisbee, Arizona. This case has to do solely with events occurring in connection with those operations. Almost all of this ore is treated at the Company's smelter located at Douglas, Arizona, and thence leaves the State of Arizona in interstate commerce (R. 616).

In 1933 there was formed in Bisbee, Arizona, a labor organization known as Bisbee Miners' Union Local No. 30 of the International Union of Mine, Mill & Smelter Workers. Between the time of its organization and June 10, 1935, some of the Company's employees became members of that

union. In June, 1935, the Company had in its employ in connection with its mining operations at Bisbee, Arizona, approximately 950 persons (R. 530, 842). On June 6, 1935, eight men employed by the Company were discharged for "conduct which endangered the comfort and, to some extent, the safety" of their fellow workers (R. 844). The men discharged were members of the union. On the following evening, June 7, 1935, because of these discharges the union members voted to call a strike, effective June 10, 1935 (R. 100-102, 844). No demand was made upon the Company for the reemployment of these men and the Company was never given any notice of or statement of the reasons for the strike (R. 127-128, 657). On the morning of June 10, 1935, less than ten per cent of the persons on the Company's payroll ceased work and established picket lines (R. 101, 845).

For a period of approximately two weeks the Company's mining operations were somewhat impaired as a result of this cessation of work but by the end of June all of the strikers had been replaced and mining operations were normal (R. 531, 583-585, 845). The picket lines, however, were still in existence. This was the situation which existed on July 5, 1935, when the Act went into effect. On August 9, 1935, a committee representing the union called upon local officials of the Company and proposed the mass reinstatement of the men discharged on June 6, 1935, and of those who had walked out on June 10, 1935, as the basis for terminating the strike. This was the first instance of any communication between the union and the Company concerning any phase of the situation. On this occasion the local officials of the Company advised the representatives of the union that these men could not be reinstated because their jobs had been filled. On August 23, 1935, a similar meeting was held at which the same proposition was made by representatives of the union and a similar reply given by the local officials of the Company. There has been no meeting or request for a meeting since that date. On August 24, 1935,

the union officially terminated the strike and the picket lines were disbanded (R. 599-600, 650, 657-658, 845, Board's Exhibits 60, 61).

With the possible exception of one or two individuals, none of the men who walked out on June 10, 1935, has been reemployed by the Company. Of the forty-five individuals whose cases were before the Board, most have at some time since August 24, 1935, made applications for reemployment to the Company's employment agent, but none of them has been rehired. At the time of the hearing referred to in the next paragraph employees on the Company's payroll numbered approximately 1400, as compared with approximately 950 on June 10, 1935 (R. 842, 861, 863).

On May 25, 1937, the union filed charges under the Act against the Company alleging the commission of an unfair labor practice in refusing employment to six individuals who participated in the strike (R. 4). These charges were amended on December 18, 1937, the amended charges involving forty-seven men (R. 6-9). On January 10, 1938, the Board issued a complaint against the Company charging it with having engaged in unfair labor practices under subdivisions (1) and (3) of Section 8 of the Act in refusing to reinstate forty-eight individuals named therein (R. 10-27). Hearings on this complaint were held at Bisbee, Arizona, from January 27 to February 3, 1938. On March 16, 1938, the Trial Examiner's Intermediate Report was issued and to this report the Company filed with the Board exceptions and a supporting brief (R. 687-747). On May 5, 1938, the Company presented oral argument to the Board and on July 20, 1939, more than a year later, the case was re-argued (R. 749, 836). The Board's Decision and Order was issued on January 16, 1940, which was approximately two years and eight months after the filing of the charges (R. 837).

(b) *The Board's Decision and Order*

The Board found that the Company "systematically applied a general policy of refusing to reinstate or hire

persons who participated in the strike" (R. 861, 865-866), and that with respect to forty of the forty-five persons involved in the case this constituted an unfair labor practice within the provisions of subdivisions (1) and (3) of Section 8 of the Act (R. 908). The Board reached the conclusion of law that the "strike was a labor dispute involving a controversy over the tenure of employment of the eight union members discharged on June 8 (sic) 1935; that the strikers' work ceased as a consequence of that labor dispute which was current on July 5, 1935, the effective date of the Act; and that the strikers retained their status as striking employees on that date" (R. 862-863). It further concluded that "while it is true that the strikers' jobs had been filled by June 28, 1935, they occupied the status of striking employees on August 9, 1935, the date of their first mass application for reinstatement" (R. 863). Then, having found that between August 9 and August 24, 1935, the Company filled twenty-one vacancies but hired none of the strikers, the Board concluded that "on and after August 24, 1935, when the strike was formally ended the strikers retained their status as employees since between August 9, 1935, and the former date, the resumption of their status as working employees had been discriminatorily denied them by the Respondent's unfair labor practices" (R. 864).

The foregoing findings and conclusions were said by the Board to be applicable to only thirty-eight of the forty-five individuals involved in the case because the remaining seven were not in the Company's employ on June 10, 1935, when the walk-out occurred. The Board concluded, however, that as to all forty-five the Act afforded protection regardless of their status as employees (R. 864).

As a remedy for the unfair labor practices in which the Board had found the Company to be engaged, it ordered the Company to "reinstate" thirty-nine men with back pay and to give back pay to one man without reinstatement. The case was dismissed as to the other five (R. 916-919). According to the Board's order back pay for thirty-six of these

men runs from January 1, 1936, to the date of their reinstatement (R. 917). As to two, namely, Vernon Dell Curtis and Grover Gornett, the back pay period is broken between the dates of March 16, 1938, and January, 1940, because on the former date the Trial Examiner in his Intermediate Report recommended the dismissal of their cases and on the latter date the Board rejected that recommendation in its own Decision and Order (R. 913-914). As to one individual, William Daugherty, the back pay runs from January 15, 1937, to March 16, 1938, and from January 16, 1940, to date of reinstatement (R. 914). As to Henry Waters, back pay runs from January 1, 1936, to January 1, 1937, on which date, the Board found, he became unemployable (R. 913).

The Board found that none of the individuals involved in the case had obtained "other regular and substantially equivalent employment" within the definition of the term "employee" as set forth in Section 2(3) of the Act (R. 909) and went further to conclude that even if any one of them had obtained such employment it would still have the authority to order his reinstatement.

(c) *The lower court's decision*

Pursuant to Section 10(f) of the Act the Company obtained a review of the Board's Decision and Order in the lower court. The lower court held that since there was a labor dispute current on July 5, 1935, the effective date of the Act, the individuals on strike on that date were "employees" of the Company (R. 926). It, therefore, affirmed the Board's order as to the reinstatement with back pay of sixteen persons and as to back pay for the one person who had become unemployable. It remanded to the Board for further evidence the question of the equivalency of other employment obtained by twenty-one individuals, but ruled, contrary to the Board's contention, that if such equivalency were established the Board's order of reinstatement should be set aside (R. 927). It did, however, affirm the Board's order for the payment of back pay to these twenty-one per-

sons up to the time they obtained such other employment. As to two individuals who were not employed by the Company at the commencement of the strike the lower court set aside the Board's order of reinstatement and back pay (R. 928-929).

The lower court denied to the Company its request for judicial relief from the amount of the award of back pay, which request was predicated upon the excessive delay in the institution and final disposition of the case (R. 929), but did hold that the amount of back pay should be reduced not only by the actual earnings during the period between the unfair labor practice and the ultimate date of reinstatement, but also by such amounts as the persons involved "failed without excuse to earn" during that same period (R. 928).

Both the Company and the Board petitioned this Court for writs of certiorari to review the lower court's decision and the case is now before this court on the questions presented in their respective petitions.

Questions Presented

The following are the questions presented by the Company and the Board for consideration and decision by this Court:

1. Whether the lower court erred in setting aside the Board's order directing the Company to offer employment and "back pay" to two individuals who were denied employment because of their union activities, but who were not "employees" of the Company at the time of such denial.

2. Whether the lower court erred in holding that the individuals who went on strike on June 10, 1935, were "employees" of the Company on the effective date of the Act.

3. Whether the lower court erred in holding that the individuals who went on strike on June 10, 1935, were "em-

ployees" of the Company at the time they were refused reinstatement.

4. Whether the lower court erred in holding that the Board has no authority to order the reinstatement of individuals who were discriminated against while occupying the status of "employees" but who thereafter obtained "other regular and substantially equivalent employment."

5. Whether the lower court erred in holding that the Board has authority to order the payment of back pay to an individual as to whom it has no authority to order reinstatement.

6. Whether the lower court erred in holding that the Board in making an award of back pay must provide for the deduction of amounts which the recipients "failed without excuse to earn."

7. Whether the lower court erred in holding that the Company was not entitled to judicial relief from the amount of the back pay awarded.

Summary of Argument

I. It is not unfair labor practice for an employer to refuse employment because of union membership or activity to one who is not his "employee" as that term is defined in Section 2(3) of the Act, and the Board has no authority to order the employment or the payment of back pay to such a person;

A. The Act does not make such a labor practice unfair or give the Board such authority.

B. If construed to authorize the Board to require the employment of a person who was not an "employee" at the time he was discriminatorily refused employment, the Act would be in violation of the Fifth Amendment of the Constitution of the United States.

II. The individuals who went on strike on June 10, 1935, were not "employees" of the Company at the time the Act became effective and did not become such by virtue of the provisions of the Act.

III. The persons who went on strike on June 10, 1935, have at no time occupied the status of "employees" under the Act and no unfair labor practice has been committed by the Company.

A. The persons who went on strike on June 10, 1935, did not occupy the status of "employees" between July 5, 1935, and August 24, 1935, merely by virtue of the picketing which was discontinued on the latter date.

B. Even assuming that the persons who went on strike on June 10, 1935, were "employees" of the Company under the Act between July 5 and August 24, 1935, there was no discriminatory refusal to "reinstate" and consequently no unfair labor practice during that period.

C. The discriminatory refusals to hire occurred after August 24, 1935, but from and after that date the persons who had previously been on strike were clearly not "employees" and no unfair labor practice was committed.

IV. The Board has no authority under Section 10(c) of the Act to order the reinstatement of persons who were discriminated against while occupying the status of "employees" as defined in Section 2(3), but who thereafter obtained "other regular and substantially equivalent employment" within the meaning of the latter provision, because such persons no longer occupy the status of "employees."

V. Under Section 10(c) of the Act the Board's authority with respect to reinstatement and back pay is limited to "reinstatement of employees with or without back pay"

and the Board is not authorized to award back pay to persons as to whom it has no authority to order reinstatement.

VI. A person who has been the object of an unfair labor practice has the duty of exercising reasonable diligence to secure and retain other employment and the amount of back pay to which he might otherwise be entitled should be reduced by whatever amount he failed without excuse to earn.

VII. Where the representatives of persons who claim to have been discriminated against delay for more than two years before filing charges and the Board thereafter takes an additional two and a half years to dispose of the case, an employer who has been helpless during that entire period of time to obtain a determination of his rights and obligations is entitled to judicial relief from an excessive award of back pay.

ARGUMENT

I. It is not an unfair labor practice for an employer to refuse employment because of union membership or activity to one who is not his "employee" as that term is defined in Section 2(3) of the Act, and the Board has no authority to order the employment or the payment of back pay to such a person.

A. The Act does not make such a labor practice unfair or give the Board such authority.

1. Act applicable only to employees.

That the Act is concerned only with the protection of the rights of "employees" as therein defined appears from an examination of the entire statute. The findings and policy announced in Section 1 may be summarized as follows: The denial by employers to employees of the right to organize and bargain collectively leads to strikes and industrial un-

rest; the inequality of bargaining power between employers and employees tends to burden commerce and to aggravate recurrent business depressions; protection of employees' rights to organize and bargain collectively will restore equality of bargaining power between employers and employees and will tend to avoid labor disputes.

Section 2(3) gives a very carefully worded and comprehensive definition of the term "employee" and Section 7 defines in detail the rights of each such "employee," the free exercise of which rights the statute was designed to protect.

It is significant that in explaining the definition of the term "employee" referred to above, Senator Walsh, Chairman of the Senate Committee on Education and Labor, took considerable pains to show the reason for extending the term to include persons discriminatorily discharged or out on strike, and in so doing to mark the limit beyond which protection would not be afforded by the Act:

> "To hold otherwise for the purpose of this bill would be to withdraw the Government from the field at the very point where the process of collective bargaining has reached a critical stage and where the general public interest has mounted to its highest point. And *to hold that a worker who because of an unfair labor practice has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby.*" (italics ours) Senate Report No. 573, 74th Congress, 1st Session, p. 6.

It can be said without possibility of contradiction that the language of the statute not only fails to support the grant of authority contended by the Board, but also reveals a clear and consistent congressional intention to limit the Board's authority to the correction of abuses within the relationship between employers and employees.

2. Section 8(3) is clear in meaning.

In directing the Company to employ two persons who were discriminatorily refused employment and who were not "employees" of the Company at the time of such refusal, the Board relies chiefly upon the unfair labor practice defined in Section 8(3) of the Act. In this position it finds support in one Circuit Court of Appeals: *National Labor Relations Board* vs. *Waumbec Mills, Inc.*, 114 Fed. (2d) 226 (C. C. A. 1st, 1940). It finds opposition, however, in the lower court in the instant case and in *National Labor Relations Board* vs. *National Casket Company*, 107 Fed. (2d) 992 (C. C. A. 2nd, 1939) previously decided by that same court.

The controversy between the two courts centers about an interpretation of Section 8(3) which reads as follows:

> "Sec. 8. It shall be an unfair labor practice for an employer:
>
> * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *."

Obviously, it is the presence of the word "hire" which has given rise to this situation. The Company, with all due respect to the learned judges who have written opinions on the question, submits that both courts have ignored the plain meaning of the language chosen by Congress to express its intent. The Board has done the same thing. Apparently because the word "to" happens to precede the word "hire", all have been misled into believing that "hire" was being used as a verb. A careful reading, however, shows that rather than forming a part of the infinitive "to hire" the word "to" is a preposition and the word "hire" is used as a noun, just as the nouns "tenure," "term," and "condition" which follow. And the word "hire" as a nonn has a very plain and well understood meaning. It has been defined as follows:

"The price or compensation for labor and services or for temporary possession and use of another's property. A bailment that consists in the letting or furnishing of a chattel for temporary use for a compensation." Funk & Wagnall's New Standard Dictionary (1936 Ed.).

"The price, reward, or compensation paid or contracted to be paid for the temporary use of a thing or a place for personal service or for labor; pay; reward in its general sense, pay for the use of anything, including wages, rent and formerly interest; in specific sense, recompense paid for the use of a chattel other than money or for services." Webster's New International Dictionary (1931 Ed.).

Hire, n.: Compensation for the use of a thing, or for labor or services." Black's Law Dictionary (2nd Ed.) 572.

It has been consistently held by the courts to be an all-inclusive term used to describe the various types of compensation or reward for services.

In re Yoder, 127 Fed. 894, 895 (U. S. Dist. Ct. Pa. 1904);
Coviello vs. *Ind. Comm.*, 196 N. E. 661 (Ohio 1935);
Carr vs. *State*, 59 Ind. 178, 180 (Ind. 1875);
Reynolds vs. *Reynolds*, 58 Pac. (2d) 660, 661 (Cal. App. 1936);
Vol. 19 *Words and Phrases* (Perm. Ed.) 485-487.

Giving the word its obvious and plain meaning, it is clear that Congress chose it for the purpose of prohibiting an obvious method of discriminating against an employee because of his affiliation with a labor organization, i.e., by paying him at a lesser rate than one performing the same services but not so affiliated. It selected the word "hire" lest the use of a less inclusive term, such as "wages" or "salary" might leave room for evasion of the prohibition. The Company submits that if Congress had intended to extend the protection of the Act to other than "employees" and to prohibit discrimination in regard to hiring, it would

have used the word "hiring," or an appropriate synonym. The word "hire" having a plain and distinct meaning and being in no sense of the word synonymous with the word "hiring," there is no occasion to resort to other aids for interpreting its meaning.

To say that discrimination in hiring for the purpose of hampering the growth of labor organizations is in effect the use of the blacklist weapon against labor by employers and an evil even greater than those obviously prohibited by the Act is beside the point. See *National Labor Relations Board* vs. *Waumbec Mills, Inc.*, supra. It is for Congress alone to decide what practices shall be prohibited, and from the plain language of this statute it is clear that Congress did not intend to cover any practices, no matter how reprehensible, other than those to which it specifically adverted.

3. Section 10(c) is no justification.

In presuming to order the Company to hire strangers to whom employment has been discriminatorily denied, the Board also places reliance upon the language of Section 10(c) of the Act whereby it is authorized to direct an employer "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." Without discussing at this point the restrictive nature of the foregoing language as regards the matter of "reinstatement" and "back pay", suffice it to point out that again the word "employee" is used and that as discussed above "the policies of the Act" as expressed in Section 1 are to eliminate labor disputes by protecting "employees" in their rights to organize and bargain collectively through representatives of their own choosing.

The conclusion that it was the intention of Congress by the language used in Section 10(c) to limit reinstatement to those occupying the status of "employees" is born out by the following language in the report of the Special Committee of the House of Representatives, 76th Congress, ap-

pointed pursuant to H. Res. 258 to investigate the National Labor Relations Board, with particular reference to the authority herein asserted by the Board and to the decision in the *Waumbec Mills* case, supra:

> "The language in Section 10(c) of the Act refers specifically to 'reinstatement' in the provision referring to back pay; nothing is said about original employment or 'instatement'."
>
> House Rep. No. 3109, Part 1, 76th, Congress, 3rd Session, p. 80.

4. *The legislative history does not support the Board's contention.*

Although a resort to the legislative history of the statute is not justified by any ambiguity in the language used, it is incumbent upon the Company to examine that history, arguendo, because the Board places great emphasis upon it. Such an examination shows no indication of an intention on the part of Congress to extend to the Board the authority which it seeks to exercise in this case.

The legislative history of the Act leaves no doubt but that the major purpose of Section 8(3) was to spell out in greater detail the prohibitions contained in Section 7(a) of the National Industrial Recovery Act (48 Stat. 195, C. 90) and in Section 3 of the Norris-La Guardia Anti-Injunction Act (47 Stat. 70, C. 90; 29 U. S. C. A. Sec. 101 et seq.), with particular reference to the outlawing of "yellow-dog" contracts.

Senator Wagner, from whom the act derives its more familiar appellation, made the following remarks with specific reference to Section 8(3) during debate on the measure:

> "This provision is merely a logical and imperative extension of that section of the Norris-La Guardia Act which makes the 'yellow dog' contract unenforceable in the Federal courts. If freedom of organization is to be preserved, the employees must have more than the knowledge that the courts

will not be used to confirm injustice. They need protection most in those very cases where the employer is strong enough to impress his will without the aid of the law. And it is perfectly obvious that unfair pressure may be exercised by *discrimination during employment as well as by actual discharge.*" (Italics ours.) Congressional Record, pp. 7570-1, 74th Congress, 1st Session.

The Senate Committee on Education and Labor discusses the particular provision as follows:

> "This provision rounds out the idea expressed in section 7(a) of the National Industrial Recovery Act to the effect that—
>
> No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing * * *.
>
> Of course nothing in the bill prevents an employer from discharging a man for incompetence; from advancing him for special aptitude; or from demoting him for failure to perform. But if the right to be free from employer interference in self organization or to join or refrain from joining a labor organization is to have any practical meaning, it must be accompanied by assurance that its exercise will not result in discriminatory treatment or loss of the opportunity for work." Senate Report No. 573, 74th Congress, 1st Session, p. 11.

The House Committee on Labor gives substantially the same explanation:

> "The third unfair labor practice prohibits an employer, by discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization. This spells out in greater detail the provisions of section 7(a) prohibiting 'yellow-dog' contracts and interference with self-organization. This interference may be present in a

variety of situations in this connection, such as discrimination in discharge, lay-off, demotion, or transfer, hire, forced resignation, or division of work; in reinstatement or hire following a technical change in corporate structure, a strike, lock-out, temporary lay-off, or a transfer of the plant.

Nothing in this subsection prohibits interference with the normal exercise of the right of employers to select their employees or to discharge them. All that is intended is that the employer shall not by discriminatory treatment in hire or tenure of employment or terms or conditions of employment, interfere with the exercise by employees of their right to organize and choose representatives. It is for this reason that the employer is prohibited from encouraging or discouraging membership in any labor organization by such discrimination." House Report No. 1147, 74th Congress, 1st Session, p. 19.

In the light of these committee reports it is illuminating to read again the provisions of Section 7(a) of the National Industrial Recovery Act, supra:

"(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; * * * ."

Where can one find in that language anything prohibiting a discriminatory refusal to hire a stranger?

Section 8(3) of the Act makes the obtaining of any type of "yellow dog" contract of employment an unfair labor

practice but it in no wise limits an employer's freedom to refuse to hire for union activity or for any other reason. The Senate Report makes the following statement:

> "The unfair labor practices listed in this bill are supported by a wealth of precedent in prior Federal law." Senate Report, supra, pages 8-9.

It has never been suggested that there is precedent for compelling an employer to hire any particular applicant for work. The House Report explains that subdivisions (2), (3), (4) and (5) of Section 8 merely state specific types of practices that were dealt with generally in subdivision 1 of that section.

House Report, supra, p. 17.

It follows that since Section 8(1) is expressly limited to "employees", Section 8(3) was not intended to protect mere applicants for employment. This view is greatly strengthened by the fact that both reports introduced the discussion of Section 8 with the title **Rights of Employees.**

Senate Report, supra, p. 8;
House Report, supra, p. 15.

Nowhere in the legislative history of the Act is there any reference to the matter of hiring. If the provisions of Section 8(3) were merely intended to prohibit discrimination with respect to the remuneration of employees and the tenure of their employment and to outlaw "yellow dog contracts," all of which matters were familiar subjects of legislation, it is not difficult to understand the absence of debate over the question now under discussion. If, on the other hand, they were understood to include in the act the enforced selection of applicants for employment, one can hardly believe that the members of Congress would have been so completely passive in their acceptance of a measure without precedent in the laws of this country.

B. If construed to authorize the Board to require the employment of a person who was not an "employee" at the time he was discriminatorily refused employment, the Act would be in violation of the Fifth Amendment to the Constitution of the United States.

If it be assumed for the purpose of argument that Congress intended to give to the Board the power to order the employment of strangers, the question arises as to the constitutionality of the statute so construed. The question can be briefly expressed: "Can Congress enact a law whereby one individual can be compelled against his will to enter into a contract of personal service with another?"

The decisions of this Court have imposed the important qualification on the liberty of contract that it shall yield to the reasonable exercise of the powers granted to Congress. The question thus becomes one of degree,—when does interference with freedom of contract become unconstitutional? The more arbitrary the measure, the more urgent must be the public policy to justify it.

This Court has held that the policy behind the Act was sufficiently pressing to justify invasion of private contractual rights. It has upheld the prohibition against discharge of an employee because of union membership.

> *National Labor Relations Board* vs. *Jones & Laughlin Steel Co.*, 301 U. S. 1, 81 L. Ed. 893 (1937).

It has also upheld the provisions of the Railway Labor Act (1926, C. 347, 44 Stat. 577; 1934, C. 691, 48 Stat. 1185) prohibiting employer interference with employee organization and selection of representatives.

> *Texas & N. O. Ry. Co.* vs. *Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548, 74 L. Ed. 1034 (1930);
> *Virginian Ry. Co.* vs. *System Federation No. 40*, 300 U. S. 515, 81 L. Ed. 789 (1937).

These decisions, however, go no farther than validating the imposition of restrictions on contracts freely made. The question before the Court now is whether the attempt of

the Board to stretch the wording of the Act to force employers to *enter* into contracts for personal services is not an added encroachment upon the liberty of contract which goes beyond the realm of permissibility heretofore outlined by the Court. It is one thing to say that if a person does see fit to enter into a contract it shall be governed and modified by certain statutory restrictions and an entirely different thing to say that he must enter into the contract if his unwillingness so to do is predicated upon one particular objection.

It has been said by this Court that its earlier decisions in *Adair* vs. *U. S.*, 208 U. S. 161, 52 L. Ed. 436 (1908) and *Coppage* vs. *State of Kansas*, 236 U. S. 1, 59 L. Ed. 441 (1915) are "inapplicable to legislation of this character".

> *National Labor Relations Board* vs. *Jones & Laughlin Steel Corp.*, supra;
> *Texas & N. O. Ry. Co.* vs *Brotherhood of Railway & Steamship Clerks*, supra;
> *Virginian Ry. Co.* vs. *System Federation No. 40*, supra.

It is the Company's interpretation of this statement that the passage of time has shown that some of the language used in the *Adair* and *Coppage* cases was too broad for application under present day circumstances and that insofar as these cases invalidate legislation prohibiting the discharge of an employee for union activities (*Adair* case) and legislation prohibiting the execution of a "yellow dog" contract as a condition of employment (*Coppage* case), they are no longer the law of the land. But this Court has given a clear explanation of the extent of its decision in the *Jones & Laughlin* case, supra, in the following statement in *National Labor Relations Board* vs. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347, 82 L. Ed. 1381, 1391 (1938):

> "We have held that, in the exercise of the commerce power, Congress may impose *upon contractual relationships* reasonable regulations calculated to

> protect commerce against threatened industrial strife (citing Jones & Laughlin case). The Board's order there sustained required the reinstatement of discharged employees. The requirement interfered with freedom of contract which the employer would have enjoyed except for the mandate of the statute." (Italics ours)

This language affords no justification for the claim that Congress can enact legislation whereby an employer may be forced to enter into a contract of personal service with a stranger. His freedom to refrain from so doing was clearly recognized in the dissenting opinions in the *Adair* and *Coppage* cases, supra. In the *Adair* case, Mr. Justice Holmes, in his dissenting opinion, made the following statement at page 191:

> "The section is, in substance, a very limited interference with freedom of contract, no more. It does not require the carriers to employ any one. It does not prevent them to refuse to employ any one, for any reason they deem good, * * *. The section simply prohibits the more powerful party to execute certain undertakings, or to threaten dismissal or unjustly discriminate on certain grounds *against those already employed.*" (Italics ours)

In the *Coppage* case Mr. Justice Day in a dissenting opinion in which the present Chief Justice concurred, had this to say at page 35:

> "It would be impossible to maintain that because one is free to accept or refuse a given employment, or *because one may at will employ or refuse to employ another*, it follows that the parties have a constitutional right to insert in an agreement of employment any stipulation they choose." (Italics ours.)

That such freedom of refusal to employ is still recognized is apparent from the following language used in the *Jones & Laughlin* case (p. 45):

> "The Act does not compel agreements between employers and employees. It does not compel any agreement whatever."

And in *The Associated Press* vs. *National Labor Relations Board*, 301 U. S. 103, 81 L. Ed. 953 (1937), at page 132, it was said:

> "The Act does not compel the petitioner to employ anyone; * * *."

There is a logical distinction between imposing limiting conditions upon a contract and forcing the creation of a contract. An attempt by Congress to deny to an employer this primary right to hire whom he pleases would be, we submit, unconstitutional under the Fifth Amendment.

In this regard it is proper to consider the approach of Congress and the courts to the problem of freedom of contract in other fields of the law. In the Clayton Act of 1914, strengthened and reenacted in 1936, Congress, while seeking primarily to prevent price discrimination, nevertheless expressly provided that a man should not be forced to make any contract against his will. The wording is identical in both acts:

> "And provided, further, That nothing herein contained shall prevent persons engaged in selling goods, wares, and merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade." October 15, 1914, C. 323, Sec. 2, 38 Stat. 730. June 19, 1936, C. 592, Sec. 1, 49 Stat. 1526.

In the only case directly concerned with the construction of this section, the United States Circuit Court of Appeals for the Second Circuit said in *Great Atlantic and Pacific Tea Co.* vs. *Cream of Wheat Co.*, 227 Fed. 46, 48 (1915):

> "We had supposed it was elementary law that a trader could buy from whom he pleased and sell to whom he pleased, and that his selection of seller and buyer was wholly his own concern."

The court added at page 49:

> "Before the Sherman Act it was law that a trader might reject the offer of a proposed buyer, for any reason that appealed to him; it might be because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act, has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the government."

Construing the Lever Act (C. 53, 40 Stat. 276), which fixed the price of coal during the first World War, this Court in *Highland* vs. *Russell Car & Snow Plow Company*, 279 U. S. 253, 73 L. Ed. 688 (1929), while refusing to allow recovery of more than the statutory price, said, at page 262: "Plaintiff was free to keep his coal." Neither the Lever Act nor the Clayton Act attempts to force the formation of contracts between specific persons. They merely control the terms upon which certain contracts may be entered into if the parties see fit to contract.

The Board may suggest that under the Fourteenth Amendment states have been allowed to enforce the making of contracts with pilots in certain harbors against the shipowner's will.

> *Ex Parte McNeil*, 13 Wall. 236, 80 U. S. 236, 20 L. Ed. 624 (1872).

We call attention to the peculiar circumstances making essential that solitary exception to the general rule as a police measure for safety in harbor traffic. Pilots are not employees, and contracts for their services are in the nature of a tax to maintain a vital public function.

The fundamental policy of the Act is to safeguard the rights of employees to self organization and collective bargaining.

> *National Labor Relations Board* vs. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 83 L. Ed. 627.

If it should be extended to confer rights upon applicants for employment and thereby become an instrument whereby the federal government could force the making of contracts for personal services and thus unionize all industry it would be, we submit, an unreasonable exercise of the powers granted to Congress.

II. The individuals who went on strike on June 10, 1935, were not "employees" of the Company at the time the Act became effective and did not become such by virtue of the provisions of the Act.

Obviously the argument with respect to the remaining questions presented for the consideration of the Court proceeds on the theory that the protection afforded by the Act is limited to "employees" as therein defined, and that the Board has no authority to order the employment of one not occupying that status who has been discriminatorily refused a job.

The term "employee" as defined in Section 2(3) of the Act is considerably broader in its scope than is the common law definition of the same term. Under the Act it is not limited to the relationship with a particular employer and includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment." Thus, one who at common law would stand in the position of a stranger to the Company might now by virtue of the definition contained in the Act occupy the status of an "employee".

If construed so as to give it a retroactive effect the Act would clearly violate the provisions of the Fifth Amendment to the Constitution of the United States in that by transforming the past status of a stranger to that of an employee it would empower the Board to force an employer against his will to employ an individual who prior to the time the

Act became effective could lay no claim to the status of an employee (Argument I, B, supra).

It is a fundamental rule of construction that a statute should have a prospective operation only unless its terms show clearly a legislative intention that it should operate retroactively.

> *Fullerton-Krueger Lumber Co.* vs. *Northern Pacific Ry. Co.*, 266 U. S. 435, 69 L. Ed. 367 (1925); *Brewster* vs. *Gage*, 280 U. S. 327, 74 L. Ed. 457 (1930).

There is no justification for inferring such an intention from the terms of the Act.

> *National Labor Relations Board* vs. *National Casket Co, Inc.*, supra.

The individuals now under discussion ceased work for the Company on June 10, 1935. In the light of the foregoing discussion, and if as a matter of law and fact they lost their status as employees of the Company prior to July 5, 1935, the provisions of the Act could not operate retroactively to restore them to that status. It becomes necessary, therefore, to consider and determine the relationship existing between them and the Company during the period from June 10 to July 5, 1935.

It has long been recognized by the courts that an individual by going on strike does not thereby terminate entirely the employer-employee relationship and become a total stranger to his former employer. Based upon the realization that such an individual does not completely abandon his employment but, on the contrary, still lays claim to his job, it has been generally held that at least for some period of time the employer-employee relationship continues to exist and the individual assumes the status of a "striking employee". It is upon this theory that the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* vs. *Carlisle Lumber Co.*, 94 Fed. (2d) 138, cert. den. 304 U. S. 575, 82 L. Ed.

1539 (C. C. A. 9th, 1937), upheld an order of the Board directing reinstatement of individuals who were on strike on the effective date of the Act and who were subsequently the objects of discrimination. Because those individuals were in legal effect "striking employees" on that date, regardless of the provisions of the Act, it could not be said that the court was interpreting the Act in such a way as to make it retroactive in operation and to empower the Board to force the lumber company to enter into contracts of employment with strangers. The same situation existed in two other cases involving strikes which commenced prior to the effective date of the Act and in both the court emphasized the fact that the men ultimately refused reinstatement were "striking employees" on July 5, 1935.

> *Jeffery-De Witt Insulator Co.* vs. *National Labor Relations Board*, 91 Fed. (2d) 134, cert. den., 302 U. S. 731, 82 L. Ed. 565 (C. C. A. 4th, 1937); *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 Fed. (2d) 531 (C. C. A. 4th, 1938).

The instant case does not, however, present a parallel situation. These individuals did not enjoy that peculiar status of "striking employees" on the effective date of the Act. They were then, and have been ever since, in a legal sense, strangers to the Company. In the first place, the action taken by these and other individuals on June 10, 1935, did not constitute a strike as that term has been consistently defined by the courts. They could not, therefore, have acquired at any time the status of "striking employees". Secondly, even if their action did constitute a strike, they had lost their status of "striking employees" prior to July 5, 1935. We shall consider these two points separately.

The record shows that on June 10, 1935, a group of employees constituting less than ten per cent of the total number of persons on the Company's payroll on that date ceased work and participated in picketing activities (R.

101, 845). There had been no previous dispute as to terms, tenure or conditions of employment and there had been no attempts made to obtain the Company's compliance with any requests made by the union. There is no evidence of any requests made by the union which were pending on June 10, 1935, or immediately prior to that date. No demands whatsoever had been made upon the Company. No meeting had been requested or held for the purpose of presenting or discussing demands, and no notice was given to the Company of an intention to strike or of the reasons for such action (R. 127-128, 657). The common import of the word "strike" necessarily involves as an element an attempt to compel the employer by collective action to accede to certain demands. It is more than a simultaneous cessation of work on the part of employees. Webster's New International Dictionary (2nd Ed.), defines the word "strike" as follows:

> "Act of quitting work; specif., such an act done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employer."

In *Uden* vs. *Schaefer*, 188 Pac. 395, 396 (Wash. 1920) the Supreme Court of the State of Washington gives the following definition:

> "A 'strike', in such common acceptation, is the act of quitting work by a body of workmen for the purpose of coercing their employer to accede to some demand they have made upon him, and which he has refused."

In *Walter W. Oeflein Inc.* vs. *State*, 188 N. W. 633 (Wis. 1922) an employer was working his employees longer hours than permitted by the union rules. For this reason a group of union employees ceased work but made no previous demand upon the employer that he conform to the union rules and gave no notice of their reasons for quitting their jobs. In holding that in that situation a

strike did not exist the Supreme Court of the State of Wisconsin made the following statement (p. 635):

> "* * * it first becomes incumbent upon the members or representatives of such unions to make a demand upon the employer in order to lay the basis for a refusal. Such a view is in harmony with the fundamental thought underlying the definition of a strike under the common acceptation of the term, and it logically follows that it is contemplated that a strike exists after the demands of employees are made and refused, as the result of which the employees are withdrawn from the employment."

A mere quitting of work for no apparent purpose and not as a means of enforcing the employer to meet certain demands does not fall within the definition of the word "strike" and the courts in the following cases recognize this fact when they include in their definitions of that word the necessary element of a dispute or demand:

Iron Molders' Union v. *Allis-Chalmers Co.*, 166 Fed. 45 (C. C. A. 7th, 1908);
Dail-Overland Co. v. *Willys-Overland*, 263 Fed. 171 (D. C. Ohio, 1919);
Jennings v. *Lee*, 295 Fed. 561 (D. C. N. Y., 1923);
Birmingham Trust Co. v. *Atlanta B. & A. Ry. Co.*, 271 Fed. 743 (D. C. Ga., 1921);
Moreland Theatres Corp. v. *Machine Operators' Protective Union*, 140 Ore. 341, 12 Pac. (2d) 333 (Ore. 1932);
Longshore Printing Co. v. *Howell*, 26 Ore. 527, 38 Pac. 547 (Ore. 1894);
Smith v. *Eagle Coal & M. Co.*, 155 S. W. 886 (Kansas City Ct. of App., Mo., 1913);
Pierce v. *Stablemen's Union*, 156 Cal. 70, 103 Pac. 324 (Cal. 1909);
West Allis Foundry Co. v. *State*, 202 N. W. 302 (Wis., 1925).

Applying these authorities to the situation presented by the record in the instant case, a record which reveals affirmatively that there was no demand, no notice and no contro-

versy, the conclusion is inevitable that the cessation of work on June 10, 1935, did not constitute a "strike". Not having participated in a "strike", the individuals here under discussion most certainly did not become "striking employees". By their action they voluntarily quit their employment and severed all relationship with the Company. Accordingly, they were on July 5, 1935, total strangers to the Company.

But even assuming that at the time these and other individuals ceased work on June 10, 1935, they acquired the status of "striking employees", another compelling line of authorities leads to the obvious conclusion that they lost that status prior to July 5, 1935. In other words, even if it could be held that this unheralded cessation of work by a relatively small group of individuals came within the definition of the word "strike" so that they would stand in the relationship of "striking employees" to the Company, the record shows clearly that prior to July 5, 1935, that "strike" had ceased to exist. Obviously an individual who leaves his employment as an incident to strike activities does not occupy indefinitely the status of a "striking employee". He maintains that status only so long as the strike continues. The authorities are clear to the effect that if the places of all "striking employees" have been filled and the employer's operations have returned to normal the strike is terminated, for the controversy, which in the instant case must be assumed, has reached an end.

The court in *Dail-Overland Co.* v. *Willys-Overland, Inc.*, supra, was confronted with a situation where a manufacturing plant had undergone a strike by a group of its employees. Picketing was still going on, but there were more persons at work than at the time the strike was called and the plant was operating at full capacity. In holding that the individuals who had ceased work as a consequence of the strike were no longer "employees", within the meaning of that term in the Clayton Act, the court made the following statement (p. 188):

> "As long as conditions are such that what is called a 'settlement' might seem reasonably possible between

the company and its late workmen, the latter, it seems, should be considered 'employees', within the meaning of that term in the Clayton Act. But when the controversy has reached a practical end, there is no reason why the term 'employee' should not be held to its ordinary meaning of one who actually works for hire for another and under the latter's control."

In *West Allis Foundry Co.* v. *State*, supra, the defendant had been convicted under a statute which made it unlawful to induce employees to engage in service by false advertising through failure to state that there is a strike at the proposed place of employment, when, in fact, a strike actually exists. In reversing the conviction on the ground that at the time charged in the information no strike did, in fact, exist at defendant's plant, the court made the following statement which reveals the factual situation and the law applicable (p. 306):

"Picketing and persuading others to keep away from such employment are but incidents of and not the strike itself. At the time of the advertisement in February, 1924, the force or economic pressure that had been exerted on the employer by such withdrawal was no longer in existence. At such time the employer had more than a normal and usual force of men and more than the normal and usual force of core makers and moulders at work.

* * * * * * * * * *

The production obtained as a result of the work being then done by such in the factory was in fact increasing its capacity. Clearly the conditions in defendant's business were then such that it was not materially affected by the strike, and there were no reasonable grounds for believing that a continuance thereof would materially affect defendant's business.

We are compelled, therefore, to come to the conclusion that at the time charged in the information

there was not a strike actually existing, and that the conviction cannot be sustained."

Likewise in *M. Steinert and Sons Co.* v. *Tagen*, 93 N. E. 584 (Mass., 1911), where the plaintiff had, within a short time after a strike of its teamsters had commenced, secured others to take their places and had at all times thereafter maintained an adequate working force, the court held that the strike no longer existed.

In *Quinlivan* v. *Dail-Overland Co.*, 274 Fed. 56, 65 (C. C. A. 6th, 1921), the Circuit Court of Appeals for the Sixth Circuit, made the following statement:

> "The objection that peaceful persuasion and peaceful picketing were improperly forbidden by the final order is, to our minds, sufficiently answered by the considerations announced by the trial judge, viz. that there was no longer a controversy between the Overland Company and its employees respecting terms and conditions of employment; that the plant was then running at full capacity and full production; that the strike had then long ceased to exist, except for certain annoying manifestations on the part of a comparatively few people; and that none of those so engaged could longer be regarded as employees."

This fundamental principle has not been changed by the Act. In *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 83 L. Ed. 660 (1939), this Court had before it the question of the reinstatement of men who had gone on strike prior to the effective date of the Act. In refusing to enforce the Board's order the Court made the following statement (p. 296):

> "The evidence and findings leave no doubt that later, in September, respondent ignored the Union's request for collective bargaining, but as at that time respondent's factory had been reopened and was operating with a full complement of production employees, the refusal to bargain could afford no basis

for an order by the Board directing, as of that date, the discharge of new employees and their replacement by strikers. Restoration of the strikers to their employment, by order of the Board, under Section 10(c) of the Act, could as a practical matter be effected only if respondent had failed in its statutory duty to bargain collectively at some time after the approval of the National Labor Relations Act on July 5th, and *before respondent had resumed normal operation of its factory.*" (Italics ours.)

See also *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, supra.

In *National Labor Relations Board* v. *Carlisle Lumber* Co., supra, the court had before it a situation where on May 3, 1935, two hundred sixty-three out of three hundred forty-four employees went out on strike and on the following day the lumber mill was closed down. Operations had not been resumed by July 5, 1935, and subsequent to that date the employer attempted to start the mill up again by requiring strikers who returned to work to renounce their union affiliations. In that situation those who would not meet the condition imposed and were, therefore, refused jobs, were ordered to be reinstated by the employer, and the court affirmed that order.

In *Standard Lime & Stone Co.* v. *National Labor Relations Board*, supra, and in *Jeffery-De Witt Insulator Co.* v. *National Labor Relations Board*, supra, both being cases which came before the Circuit Court of Appeals for the Fourth Circuit, and involving strikes which commenced prior to July 5, 1935, the court emphasizes the fact that on that date the plants involved were being operated without full complements of workers and far below normal capacities, and that the strikes were in full progress.

In the light of these authorities and of the indisputable proposition which they support, we turn to the record in the instant case. It presents clearly and on uncontradicted

testimony a situation where the places of all who ceased work on June 10, 1935, had been filled, and mining operations had returned to normal, prior to July 5, 1935. It appears (R. 530-531) that on June 7, 1935, there were nine hundred forty-one persons on the Company's payroll; that on June 21, 1935, there were nine hundred fifty-two; that on June 28, 1935, there were nine hundred eighty-six; and that on July 3, 1935, there were nine hundred ninety-six. As to the number actually working on those dates, it further appears (R. 531) that on June 7, 1935, there were seven hundred sixty-six; on June 21, seven hundred fifty-nine; on June 28, seven hundred sixty-six; and on July 3, eight hundred eight. These figures do not include persons employed as special watchmen. In other words, on July 3, 1935, there were eight hundred eight persons actually engaged in the production of copper and the duties pertaining to that operation, as compared with seven hundred sixty-six persons who were so engaged just prior to the so-called strike. As to the status of the Company's operations, petitioner's General Mine Foreman testified (R. 584) that at least by the last week in June, 1935, the Company's operations were normal.

The Board itself has made findings on this uncontroverted evidence (R. 845). Referring to the fact that less than ten percent of petitioner's nine hundred fifty employees walked out on June 10th, the Board made the following finding of fact as to the effect of such action on the Company:

> "The mine was not closed but continued to operate on a curtailed basis for several weeks until it resumed normal operations. By June 28, 1935, all the strikers' jobs had been filled."

The lower court made the following reference to the Board's findings (R. 925):

> "The Board found that by June 28th the petitioner had succeeded in filling the places of all the strikers and had resumed normal operations at the mine."

What conclusion can be reached other than that on July 5, 1935, no strike existed and that, even if they had at one time occupied the status of "striking employees", the individuals who ceased work on June 10, 1935, had lost that status and had become strangers to the Company? To be sure, the record shows that picketing continued until August 24, 1935, but, in that connection, suffice it to quote the language of the court in *Dail-Overland Co.* v. *Willys-Overland, Inc., supra* (p. 188):

> "We cannot recognize the right of individuals to prolong, long after its substance has fled, a labor controversy, and to demand that it be accorded special consideration as a real and substantial industrial dispute, with advantages to them derivable from a law said to discriminate in favor of their class if certain conditions exist."

The Board found (R. 862-863) "that the strike was a labor dispute involving a controversy over the tenure of employment of the eight union members discharged on June 8 (sic), 1935; that the strikers' work ceased as a consequence of that labor dispute which was current on July 5, 1935, the effective date of the Act; and that the strikers retained their status as striking employees on that date." This is not a finding of fact. It is a conclusion of law, and the Company respectfully submits that it is erroneous.

The lower court entirely lost sight of the point in question. It disposed of the decisions which have just been cited to this Court by stating that "none of them dealt with what is a current labor dispute within the meaning of the statute controlling here, and, while interesting, are presently of little help" (R. 926). It went on to reach its conclusion in the following language (R. 926):

> "Had the Act been effective when the strike began in June there would, of course, be no question of the retention by the strikers of their status, under

the statute, as employees. The sufficiently supported finding of the Board, however, carries the labor dispute into July 5, and that is enough to make the strikers employees within the meaning of the Act when they were refused reinstatement."

Whether or not there was a labor dispute current on July 5, 1935, is beside the point. On July 4, 1935, there was no such thing as the Act and on that day, the day preceding the effective date of the Act, the status of these individuals as "striking employees" or as strangers was governed by the law of that earlier date, unsupplemented by the Act. It is clear that under that law these individuals were strangers. We submit that using the language of the Act to convert those who were strangers on July 4, 1935, into "employees" of the Company on July 5, 1935, is to give the Act a retroactive effect not warranted by its terms and to create a contractual relationship which theretofore did not exist.

III. The persons who went on strike on June 10, 1935, have at no time occupied the status of "employees" under the Act and no unfair labor practice has been committed by the Company.

A. The persons who went on strike on June 10, 1935, did not occupy the status of "employees" between July 5, 1935, and August 24, 1935, merely by virtue of the picketing which was discontinued on the latter date.

Turning now to the provisions of the Act and the situation to which they became applicable on July 5, 1935, we examine the status of these individuals between that date and August 24, 1935, only because the Board has concluded that they were the objects of discrimination during that period. That that conclusion is not supported by the record is the subject for discussion in the sub-paragraph to follow. For the purpose of the present discussion only we assume it to be correct.

Whether or not these men were "employees" depends entirely upon the application of the definition of that term in Section 2 (3) to the circumstances in which we find them during this particular period. Were they individuals whose work had ceased as a consequence of, or in connection with, a current labor dispute? If so, they were employees. The answer to this question depends on the meaning of the term, "current labor dispute", as used in the Act. It appears to us that the word "current" can be interpreted as being applicable to one of three times. It could mean "current" at the time the work ceased, or "current" at the time the Act went into effect, or "current" at the time conduct prohibited by the Act occurred. Under the first possibility any individual who went on strike as a consequence of, or in connection with, a labor dispute "current" at the time he ceased work would remain an "employee" in perpetuity. Such an interpretation is obviously ridiculous. The second possibility is too narrow in scope and would render this portion of the definition of an "employee" meaningless. The third, we submit, is the only plausible interpretation. As so construed, the Act would afford protection against discrimination or a refusal to bargain to those whose work has ceased as a consequence of, or in connection with, a labor dispute current at the time of such discrimination or refusal. We adopt that interpretation and apply it to the facts in the instant case.

The situation between July 5 and August 21, 1935, remained constant. The strikers' places had been filled and the Company's operations were normal. The force or economic pressure that had been originally exerted on the Company with the cessation of work on June 10th had long since been spent. Any possibility of the strikers' forcing the issue to a successful conclusion had disappeared, and yet each day this group picketed the mine entrances and unsuccessfully attempted to persuade a full complement of workers to refrain from working. This situation could have gone on forever. Let us suppose for the moment that it was

still going on today and that the situation was just exactly the same now as it was in July and August of 1935. Could it be said that after almost six years a labor dispute was still current? Could it be said that after almost six years the Company had both a full complement of working employees and 95 non-working employees? Such a conclusion would seem highly ridiculous, and yet if it is correct as to the situation then it is equally correct now.

The sole question to be determined is whether picketing, which is not a labor dispute but merely an incident thereto, is in and of itself sufficient under the Act to maintain the currency of a labor dispute. If it is, then Congress has placed in the hands of labor organizations the sole power to render a labor dispute "current" or terminated as best suits their purposes. If, by exercising the power to maintain the currency of labor disputes long after their substance has fled, labor organizations can thereby preserve indefinitely for their members the status of "employees", with all of the rights and privileges which the Act affords to those occupying that status, what has become of the policy of Congress to eliminate disputes which obstruct the free flow of commerce? We submit that the existence and exercise of such power in the hands of either party to the industrial relationship would increase in number and prolong in length the unreasonable disputes which it was the purpose of Congress to eliminate.

We understand the policy of the federal government to be one designed towards the establishment of equality in industrial relations. To this end the Norris-LaGuardia Anti-Injunction Act was enacted to protect labor in the legitimate exercise of its right to peaceable persuasion. To the same end was designed the statute enacted in 1936 to prohibit the transportation of strikebreakers in interstate commerce. (49 Stat., 1899.) And so also the Act now under discussion was passed to protect labor in the exercise of its right to self organization and the selection of representatives for collective bargaining. We submit that

it was neither the purpose nor the policy of the Congress which enacted this statute to create the inequality in industrial relations which would result from the decision of the lower court in this case, protecting labor in the unreasonable use of the strike weapon. Accordingly we submit that under the Act there was no labor dispute current between July 5, 1935, and August 24, 1935, and therefore no unfair labor practice could have been committed by the Company with respect to these men.

B. Even assuming that the persons who went on strike on June 10, 1935, were "employees" of the Company under the Act between July 5 and August 24, 1935, there was no discriminatory refusal to "reinstate" and consequently no unfair labor practice during that period.

If it be held, contrary to the position taken by the Company in the foregoing sub-paragraph, that the mere continuation of picketing manifested a "current labor dispute" and maintained these persons in the status of "employees" until August 24, 1935, nevertheless the Board's order can only be sustained on the legal conclusion that as such "employees" they were the objects of an unfair labor practice prior to that date. The record gives no support to such a conclusion. Throughout the period from July 5, 1935, the effective date of the Act, to August 24, 1935, when the strike was officially terminated and picketing ceased, the status of these persons, whatever it was, remained the same. Their places had all been filled, the Company's operations were normal, but they continued "on strike" in a mass refusal to work and evidenced that position by their strike activities and in their communications to the Company. With that situation clearly in mind, we must now look for an act on the part of the Company which constituted an unfair labor practice.

The lower court gave no indication in its decision of when it considered an unfair labor practice to have been committed. It merely stated (R. 926) that the strikers

were "employees within the meaning of the Act when they were refused reinstatement". Likewise it is difficult to determine from the Board's Decision and Order the date which it believed to be the one on which an unfair labor practice occurred. Specific reference, however, was made therein to events which transpired on August 9th and August 23rd and the statement was made with reference to the strikers (R. 864) that between August 9th and August 24th "the resumption of their status as working employees had been discriminatorily denied them by the respondent's unfair labor practices".

In view of the foregoing statement by the Board, it becomes necessary to analyze carefully what took place on August 9th and August 23rd. On both occasions a committee representing the "strikers" met with representatives of the Company and offered to call off the "strike" if the Company would put back to work the eight men discharged on June 6th and all of the men who walked out on June 10th. The Board itself (R. 863) refers to these meetings and the identical propositions put forth at each as "mass applications for reinstatement". Now just what did these "mass applications" mean? The record shows that approximately ten percent. of the approximate 950 persons on the Company's payroll on June 10th went on strike. That would indicate that there were about 95 persons, plus the 8 discharged on June 6th, or a total of 103 men, who were included in the applications. The proposition made by the union on each occasion was that if the Company would put 103 men to work en masse the "strike" would be called off and that if it would not do so the "strike" would continue as well as the picketing activities incident thereto. In other words, it was an "all or nothing" proposition. And what did the representatives of the Company do? They replied that the places of all of the men had been filled, as the record shows, and, both logically and lawfully, they refused to make room for 103 men by displacing those who had taken

their jobs. They were acting in accordance with the principles laid down by this Court in so doing.

National Labor Relations Board vs. *Mackay Radio and Telegraph Company*, supra.

The Board emphasizes (R. 863) the fact that between August 9th and August 24th the Company hired 21 men. This fact has no bearing on the legal effect of its refusal to employ 103 men en masse during that same period of time. The record shows that from day to day the need arose for additional men here and there. It also shows that it was the customary practice to hire only men who were available for employment and who were in the "rustling" line outside of the employment office at the time the need arose to fill a job. The Company had been told by these 103 men that if they were not all put back to work no one of them would work. It treated them accordingly. Obviously a group of men cannot be refusing collectively to work in order to enforce a demand on their employer, i. e., on strike, and at the same time seeking employment. An impasse is reached in asserting either position in this case. If the "strike" was still on, as the union represented, there was no unfair labor practice in refusing to put 103 unneeded men to work en masse as demanded. If, on the other hand, the 103 men were seeking work individually as jobs became available and in spite of the Company's refusal to put all 103 to work at once, then the "strike" was off, the labor dispute had terminated and no one of them was an "employee" of the Company under the Act at the time he failed to obtain a job.

We readily concede that, if "striking employees" indicate to their employer a desire to return to work and there are jobs unfilled *which they themselves left vacant by going on strike*, it is an unfair labor practice for the employer under such circumstances to discriminate in filling those vacancies.

National Labor Relations Board vs. *Mackay Radio and Telegraph Company*, supra.

We do contend, however, that at least where a strike is not occasioned by an unfair labor practice it was not the intention of Congress to place labor organizations in the unprecedented position of being permitted to "have their cake and eat it too". Where the employer is guilty of no unlawful act and labor sees fit to resort to direct action for the advancement of its economic position, it is, we submit, still required to risk the ultimate loss of employment which may result in the failure of such action. In the instant case the strike commenced prior to the effective date of the Act and was not occasioned by any unfair labor practice on the part of the Company. The strikers, protected by the Act against discrimination as long as they occupied the status of "employees" and protected by the Anti-Injunction Act against judicial interference with their legitimate efforts to win others over to their cause, fought and lost an economic battle. The Act recognizes the principle of majority rule. [Section 9(a).] Here a minority failed in an attempt to persuade the majority to join its ranks in attempting to force the Company to comply with a certain demand.* The Company was guilty of no wrong and as between it and the strikers, who voluntarily chose to risk their jobs in the hope of gain, surely the latter, not the former, should assume the loss of their own effort.

C. The discriminatory refusals to hire occurred after August 24, 1935, but from and after that date the persons who had previously been on strike were clearly not "employees" and no unfair labor practice was committed.

The Board found (R. 845) that "On August 24, 1935, the Union officially terminated the strike, and the picket line disbanded." The discriminatory refusals of employ-

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* This is only theoretically true, because no demand was made until August 9th, long after the strike had been lost. It is more logical to assume that the strike was originally called, although the record does not so show, as an incident to organizing and increasing the membership in the union.

ment all occurred after that date, but no one could conscientiously contend that after that date a strike was in progress or that a labor dispute was current or that any one of these individuals was an "employee" of the Company. From August 24, 1935, until the time of the hearing of this case before a Trial Examiner of the Board in January, 1938, the Company's payroll fluctuated considerably (R. 859). Men were hired and men were dropped. When the men involved in this case were refused employment because of their prior union activity, they received those refusals not as "employees" under the Act but as applicants for work. Their position was no different than that of the two men discussed in Paragraph I, who had left the employ of the Company prior to June 10, 1935. We submit that no unfair practice has been committed by the Company as to any one of them.

IV. The Board has no authority under Section 10(c) of the Act to order the reinstatement of persons who were discriminated against while occupying the status of "employees" as defined in Section 2(3), but who thereafter obtained "other regular and substantially equivalent employment" within the meaning of the latter provision, because such persons no longer occupy the status of "employees".

The mere statement of this proposition, in the light of the language of the Act, leaves little room for argument. Apparently the position of the Board is predicated entirely upon the provision of Section 10(c) whereby it is authorized to require an offending employer to take such action "as will effectuate the policies of this Act". If the Board's position were approved it would require complete disregard of the language chosen by Congress to express its intention. In this respect we submit for the Court's consideration the following language from a decision on the matter by the Circuit Court of Appeals for the Fourth Circuit in *Moores-*

ville Cotton Mills vs. *National Labor Relations Board*, 94 Fed. (2d) 61, 66 (1938):

> "When the definition of the term 'employee' in Section 2(3) to include any individual whose work has ceased as a consequence of a labor dispute 'and who has not obtained any other regular and substantially equivalent employment' is read in connection with the corrective power given to the Board in Section 10(c) to require employers who have been guilty of unfair labor practices 'to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act', it seems plain that the reinstatement of employees who have gotten other equivalent positions was not contemplated."

The Circuit Courts of Appeals for the Third and Ninth Circuits have reached the same conclusion.

National Labor Relations Board vs. *Botany Worsted Mills, Inc.*, 106 Fed. (2d) 263 (C. C. A. 3rd, 1939);

National Labor Relations Board vs. *Carlisle Lumber Co.*, 99 Fed. (2d) 533 (C. C. A. 9th, 1938).

The only decision to the contrary is that of the United States Circuit Court of Appeals for the Tenth Circuit in *Continental Oil Company* vs. *National Labor Relations Board*, 113 Fed. (2d) 473, cert. granted Oct. 28, 1940 (No. 413). That court in reaching such a decision predicated the same on its belief that the employee "has a legally protected tenure intermediate * * * his discrimination and his reinstatement", and that the Act "creates a legal right in the employee". We submit that such a position is untenable and that the correct view is that the reinstatement and back pay authorized by the Act are requirements imposed by the federal government to remedy a public wrong.

National Labor Relations Board vs. *Jones & Laughlin Steel Corporation*, supra;

Consolidated Edison Co. vs. *National Labor Relations Board*, 305 U. S. 197, 83 L. Ed. 127 (1938).

We find the following illuminating statement by the House Committee on Labor with respect to this particular provision of the Act:

> "No private right of action is contemplated. Essentially the unfair labor practices listed are matters of public concern, by their nature and consequences, present or potential; the proceeding is in the name of the Board, upon the Board's formal complaint." House Report No. 972, 74th Congress, 1st Session, p. 21.

V. Under Section 10(c) of the Act the Board's authority with respect to reinstatement and back pay is limited to "reinstatement of employees with or without back pay and the Board is not authorized to award back pay to persons as to whom it has no authority to order reinstatement.

With respect to the persons who have obtained other employment and as to whom the lower court refused to enforce the Board's order of reinstatement, the lower court did, however, approve so much of the order as awarded back pay to them up to the time when they obtained such other employment (R. 927). The Fourth Circuit in *Mooresville Cotton Mills* vs. *National Labor Relations Board*, supra, has said that such an order might be made because it "would not offend the terms of the act, would do justice to the workers and would tend to effectuate the policies of the act". This may well be so, but at the same time such an order violates the provisions of the Act. The Act says [Section 10(c)] that the Board may order "reinstatement of employees with or without back pay". While this language permits the Board to order reinstatement with or without back pay, it does not permit an award of back pay without reinstatement because the back pay provision is dependent upon the reinstatement provision.

> *National Labor Relations Board* vs. *Carlisle Lumber Company*, supra.

We agree with the reasoning of that court to the effect that since "reinstatement" and "back pay" were singled out for special treatment in Section 10(c), it was intended that the general words of that section concerning the effectuation of the policies of the Act were to be limited thereby.

VI. A person who has been the object of an unfair labor practice has the duty of exercising reasonable diligence to secure and retain other employment and the amount of back pay to which he might otherwise be entitled should be reduced by whatever amount he failed without excuse to earn.

Although the Board will no doubt contend that the ruling of the lower court in this respect will impose upon it an undue burden and will result in delay in the ultimate disposition of cases before it, we submit that the ruling is eminently fair to all concerned. This Court has held that the power of the Board to order affirmative action on the part of an offending employer is remedial, not punitive, in nature.

Consolidated Edison Co. vs. *National Labor Relations Board*, supra.

It is, therefore, very logical that an employer should not be forced to pay, and an employee should not be entitled to receive, any amount of back pay in excess of that which suffices to restore the status quo. To hold otherwise would be to encourage idleness. The courts have long since recognized the principle that it is the duty of the injured party reasonably to assert himself to prevent or diminish damages arising from the acts of the wrong doer.

3 *Sutherland on Damages* (3rd Ed.) 2087.

This principle has been universally applied to cases of wrongful discharge of an employee and has been adopted by this court.

Pierce vs. *Tenn. Coal & RR. Co.*, 173 U. S. 1, 43 L. Ed. 591 (1899);

Semet-Solvay Co. vs. *Wilcox*, 143 Fed. 839, 842, cert. den. 202 U. S. 617, 50 L. Ed. 1173 (C. C. A. 3rd, 1906);
Ransome Concrete Machinery Co. vs. *Moody*, 282 Fed. (2d) 9 (C. C. A. 2nd, 1922);
Alaska Fish & Lumber Co. v. *Chase*, 128 F. 886 (C. C. A. 9th, 1904);
Vol. 81, A. L. R. 282-284;
Vol. 39 C. J. 115-116;
Vol. 18 R. C. L. 527.

Although it is true that back pay under the Act does not constitute legal damages, and that no private right to the same is created in the employee (Argument IV, supra), there is a close analogy in determining under the Act the amount of back pay to which an employee is in good conscience entitled in order that he may be made whole and the effect of his employer's unfair practice obliterated. Surely it was not contemplated by Congress that an individual would be encouraged in refusing suitable employment or in failing to make a reasonable effort to occupy himself gainfully just because he had been the object of an unfair labor practice.

VII. Where the representatives of persons who claim to have been discriminated against delay for more than two years before filing charges and the Board thereafter takes an additional two and a half years to dispose of the case, an employer who has been helpless during that entire period of time to obtain a determination of his rights and obligations is entitled to judicial relief from an excessive award of back pay.

Five and one-half years have now elapsed since the events occurred which gave rise to this case. During four and one-half of those years the Company was powerless to speed a determination of its rights and obligations under the Act. During the first two of those years the extent to

which back pay might be permitted to accumulate against the Company was entirely within the control of the chosen representatives of the persons herein involved because nothing could be done toward the ultimate disposition of the case until charges were preferred against the Company by the men themselves. In the lower court the Company contended that it should be afforded judicial relief for the entire four and one-half year period, including two and a half years during which the Board failed to act. On further thought, however, that contention seems unsound because if these persons have been wronged in violation of the Act, there is no reason why they should be penalized for the delay on the part of those charged with the Act's administration. But that is not true of the period during which they themselves failed to use reasonable diligence in asserting their claims.

The Act places no limitation upon the time within which charges of unfair labor practices must be filed with the Board. Presumably, however, in enacting legislation of this character Congress sought to encourage the prompt disposition of labor disputes. Theoretically at least, back pay could be allowed to accumulate indefinitely, and this seems to be a logical instance where by analogy the doctrine of laches in equitable proceedings should be applied. If the Company is found to have been engaged in unfair labor practices, all of the elements required for the application of that doctrine are present:

1. The Company committed a wrong for which the persons affected had an administrative remedy;

2. These persons delayed unreasonably in seeking that remedy;

3. Until application for the remedy was made the Company had no way of knowing that a claim of unfair labor practices would be asserted. Until it acquired such knowledge the Company had no means of protecting itself from

possible severe monetary loss by offering reemployment to these persons if it saw fit to do so;

4. The Company was prejudiced by the delay in that it was lulled into allowing back pay to accumulate and it obligated itself to the employment of others whose jobs might have been occupied by the persons involved in this case.

Vol. 19, *American Jurisprudence*, 339, 342-343.

This Court has held the doctrine of laches applicable in cases where the government is only a nominal party.

U. S. vs. *Beebe*, 127 U. S. 338, 32 L. Ed. 121 (1888).

The Board has itself in several other cases recognized the unfairness of such a situation to an employer and has refused to award back pay for the periods during which there were unreasonable delays in filing charges.

Matter of Inland Lime & Stone Co., 8 N. L. R. B. 944;
Matter of Crowe Coal Co., 9 N. L. R. B. 1149;
Matter of L. C. Smith & Corona Typewriters, Inc., 11 N. L. R. B. 1382;
Matter of Phillips Petroleum Co., 24 N. L. R. B. No. 23, 6 L. R. R. 560, 561;
Matter of New York Times Co., 26 N. L. R. B. No. 112, 7 L. R. R. 32, 34;
Matter of Middle West Corp., 28 N. L. R. B. No. 84, 7 L. R. R. 405, 406.

In matter of *L. C. Smith & Corona Typewriters, Inc.*, supra, the Board in denying an award of back pay for the period of seventeen months between the unfair labor practice and the filing of charges, made the following statement:

> "However, since such delay would otherwise duly prejudice the respondent, and with a view to encouraging the prompt disposition of charges, we shall not award back pay * * * for the period in which

the Union failed to file its charges, in the absence of any showing of mitigating circumstances for this delay."

The Company submits that in the instant case it has been arbitrarily denied by the Board relief which the Board has consistently granted to others in similar circumstances, and that it is entitled to such relief by a decision of this Court. The Company should not be held responsible for any back pay which accumulated prior to December, 1937, when the charges with respect to the persons involved in this case were filed (R. 6-7, 47, Board's Exhibit #1-c).

Conclusion

In view of the record in this case and the propositions hereinabove set forth, we respectfully submit that the Board's order should be set aside in its entirety.

Respectfully submitted,

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APPENDIX

Statutory Provisions

NATIONAL LABOR RELATIONS ACT:

"SEC. 1. *Findings and declaration of policy.* The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest,

by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

"Sec. 2(3). The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

"Sec. 2(9). The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain

collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *."

"Sec. 10(c). The testimony taken by such member, agent or agency of the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *"

"Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

CONSTITUTION OF THE UNITED STATES:

Article V (Fifth Amendment). "No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *."

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion and concurring opinion of the court below (R. 923–930) are reported in 113 F. (2d) 202. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 837–919) are unreported.

JURISDICTION

The decree of the court below (R. 930–933) was entered on July 26, 1940. The petition for a writ of certiorari was filed on August 30, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence supporting the findings of the Board, which were sustained by the court below:

(a) that petitioner, in refusing to reinstate certain strikers, discriminated against them because of their union activities; and

(b) that the labor dispute was "current" at the time of these refusals and on the effective date of the National Labor Relations Act.

2. Whether the Act authorizes an award of back pay independently of reinstatement.

3. Whether the Board's back pay order is arbitrary or excessive because of the substantial lapse of time between the commission of the unfair labor practices and the issuance of the Board's decision.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 16–18.

STATEMENT

Upon the usual proceedings[1] the Board issued

[1] These, pursuant to Section 10 of the National Labor Relations Act, were: charge and amended charge (R. 4–9), complaint (R. 10–27), answer (R. 28–41), hearing before a trial examiner, intermediate report of the examiner (R. 687–717), exceptions thereto (R. 718–746), oral argument (R. 749), reargument (R. 836), and the filing of a brief before the Board (R. 747).

its findings of fact, conclusions of law, and order (R. 837–919). The facts, as found by the Board and as shown by the evidence, may be summarized as follows:[2]

Petitioner, a large producer of copper ore, is extensively engaged in interstate commerce (R. 840–843; R. 614–620, 675–677). In September 1933, the International Union of Mine, Mill and Smelter Workers, Local No. 30, a labor organization herein called the Union, was organized at petitioner's mine (R. 843; R. 158, 284, 393). Petitioner evidenced its hostility to the new organization by segregating its members in a separate shaft (R. 843–844; R. 197, 596, 645, 647) and by instituting a system of labor espionage (R. 845; R. 610). On June 10, 1935, because petitioner had discharged eight union men, the Union called a strike and began to picket the mine (R. 844–845; R. 101–102, 174, 193, 530, 592–593, 645–647). Although the strike caused a curtailment of petitioner's production for several weeks (R. 845; R. 663, 583–584), by June 28 petitioner had replaced all the strikers with new employees and had resumed normal operations (R. 845; R. 530–531, 538, 584–585). The strike, including daily picketing of the mine, nevertheless continued through July (the Act became effective on July 5) and until August

[2] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

24, 1935, when the Union voted to terminate the strike and disbanded the picket line (R. 845, 848; R. 101, 108, 159, 174–175, 219, 292, 367, 397, 648, 650–659, 669).

The Board found (R. 861, 863–864) that both during and after the strike petitioner adhered to a deliberate policy of refusing to permit any of the strikers to return to work, although vacancies occurred and the strikers sought to return. During the first week of the strike, petitioner's employment manager, Bateman, was given explicit instructions, which were never changed, to "go slow" in reinstating any of the strikers (R. 846; R. 142, 535). Thereafter, during June, Bateman declared to various strikers that they would never again work for petitioner (R. 850; R. 298, 420, 116, 199). After the Act took effect and prior to the termination of the strike on August 24, the strikers on three separate occasions, August 9 (R. 845, 847; R. 654–655), August 21 (R. 850–852, 855; R. 104–106, 112–115, 159–160, 175–176, 199–200, 207–208, 400), and August 23 (R. 845, 847–848; R. 106–108, 657–658) applied to petitioner for reinstatement, but on each occasion petitioner replied that it would not reinstate any of the strikers (*ibid.*).[5] Between August 9 and August 24, some

[5] At the hearing, petitioner's assistant general superintendent, H. C. Henrie (R. 658), conceded that at the time of the August 9 application and at all times thereafter, it was petitioner's "policy" not to "put those men back to work" (R. 599–600).

21 jobs became available which could have been filled from the strikers' ranks; instead, petitioner filled them with new applicants (R. 859, 860, 863; R. 750–753, 106, 113–114, 538). After August 24, and up to the date of the hearing, petitioner hired more than 2,000 employees (R. 859; R. 751–752) without departing in a single instance from its policy of barring the strikers from its employ; almost every striker applied to Bateman for employment, but was rejected because he had engaged in the strike (R. 845, 852–856, 861, 864, 870–907; R. 165–166, 170–171, 176, 181–182, 213, 219, 228–229, 232–233, 236–237, 248–250, 255, 262, 266, 268–269, 273, 280, 281, 287, 291–292, 299, 303–304, 307, 314–316, 318, 320–321, 324, 333–334, 338, 343–344, 349–350, 353, 358–360, 367–368, 375–378, 388–389, 390, 395–396, 407, 412–413, 425–426, 435–437, 453–455, 465–466, 472, 478–479). The Board found that, absent discrimination, the 38 strikers named in its order would all have been taken back by petitioner by January 1, 1936 (R. 859, 860–861, 912; R. 750–756).

The Board found also that two other persons, Curtis and Daugherty, whose employment with petitioner had lawfully been terminated prior to the beginning of the strike, were thereafter refused employment by petitioner because of their membership and activity in the Union (R. 868–870, 906; R. 248–250, 280–281, 527).

Upon the foregoing evidentiary findings, the Board found that the 38 strikers ceased work as a

consequence of and in connection with a labor dispute which was "current" when the Act took effect on July 5, 1935, and that, by virtue of Section 2 (3) of the Act (*infra*, p. 16), they remained "employees" for purposes of the Act (R. 862–864). The Board concluded that petitioner's discriminatory refusal to reinstate the strikers, or consider them for reinstatement, to positions available between August 9 and the end of the strike on August 24, or to the positions which became available thereafter, constituted discrimination against "employees" within the proscription of Section 8 (1) and (3) of the Act (*ibid.*). The Board further found, in the alternative (R. 864–865), that if the strikers were no longer "employees" at the time of the discrimination against them, petitioner's denial of employment to them, as well as to Curtis and Daugherty who concededly were merely former employees, violated Section 8 (1) and (3).

The Board's order required petitioner to cease and desist from its unfair labor practices; to offer reinstatement with back pay to 39 of the 40 men; to make whole the fortieth individual (who did not desire reinstatement) for any loss of wages suffered by him up to the date when he became unemployable; to pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment of the 40 men on work-relief projects; and to post notices (R. 915–913).

Thereafter, petitioner filed a petition in the court below to review and set aside the Board's order (R. i–viii). The Board answered, requesting enforcement of its order (R. xi–xvii). On July 11, 1940, the court handed down its opinion (R. 923–929) enforcing the Board's order except that it eliminated the provisions relating to Curtis and Daugherty [4] and the provision requiring petitioner to reimburse governmental relief agencies, modified the back-pay provisions by requiring the deduction of such amounts as each striker failed without excuse to earn, conditioned the reinstatement of 21 of the strikers upon the adducing of additional evidence before the Board that other employment which they had obtained was not substantially equivalent to their employment with petitioner, and modified the form of notices in a manner requested in the Board's brief.[5] Judge Learned Hand filed a concurring opinion (R. 929–930) stating that except for the earlier decision of the same circuit in *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992, he would have held that all of the individuals involved, whether or not they were "employees," were discriminated against in viola-

[4] The court held that the Board was without power to order petitioner to offer employment to persons who were not "employees" (R. 928–929).

[5] The Board does not agree that the court below was correct in setting aside or modifying its order in any respect other than the requested change in the form of notices.

tion of the Act. On July 26, 1940, the court entered a decree in conformity with its opinion (R. 930–933).

ARGUMENT

1. Petitioner contends on various grounds (Pet. 10–15) that the Board and the court below erred in holding that the strikers were "employees" within the meaning of Section 2 (3) of the Act at the time petitioner refused to reinstate them because of their union membership and activities.

(a) Petitioner's assertion (Pet. 10) that its first acts of discrimination occurred subsequent to the termination of the strike on August 24, 1935 (after which date it contends the strikers were no longer "employees"), challenges the concurrent findings of the Board and the court below that between August 9 and August 24 petitioner discriminatorily refused to consider for reinstatement or to reinstate any of the strikers, because of their union membership and activities, although 21 positions became available for which they applied. Whether those findings are supported by substantial evidence presents no question of general importance. Compare *National Labor Relations Board* v. *Waterman Steamship Co.*, 309 U. S. 206, 208; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, No. 588, last Term, decided May 20, 1940. Further, the evidence summarized in the Statement (*supra*, pp. 3–5), affords full support for the challenged findings.

Along the same line, petitioner assumes (Pet. 12) that the basis for the discrimination found to have been exercised against the strikers between August 9 and August 24 consisted of its failure to reinstate all the strikers *en masse*: upon this assumption, and pointing out that there were more strikers than there were positions available prior to August 24, petitioner asserts that the decision below has the effect of requiring it to discharge men lawfully hired prior to August 9 to fill the strikers' places and hence conflicts with the decision of this Court in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333. But the initial assumption is erroneous. The Board's findings of unfair labor practices prior to August 24 were based not upon petitioner's failure to discharge replacements to make room for strikers—indeed, the court below expressly distinguished that situation (R. 926–927)—but upon petitioner's discriminatory refusal to consider any of the strikers for the 21 positions which became available and were filled with other applicants after the strikers requested reinstatement (R. 860–864).

(b) Petitioner further contends (Pet. 10, 13) that since it filled the strikers' places and resumed normal operations shortly prior to the effective date of the Act, there could be no "current labor dispute" when the Act took effect, and hence that the strikers were not "employees" within the meaning of Section 2 (3) after the effective date of the Act. But, as the court below held (R. 926),

the factors relied on by petitioner do not negative the existence of a "current labor dispute"; the currency of the dispute is a question of fact on which the Board's findings are conclusive if supported by substantial evidence. *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 147 (C. C. A. 9th), certiorari denied, 304 U. S. 575. In the present case, the concurrent findings of the Board (R. 862–863) and of the court below (R. 925–926) that the labor dispute was "current" when the Act took effect, are amply supported by the proof of the continued maintenance of the picket lines (*supra*, pp. 3–4) and the acknowledgments by petitioner itself after July 5, that it recognized the continued existence of the strike (R. 648, 650–655, 657–659, 669). Further, the question of fact as to the currency of the dispute having been resolved against petitioner both by the Board and by the court below, no question worthy of review by this Court is presented. *United States* v. *Commercial Credit Co.*, 286 U. S. 63, 67; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 558.

National Labor Relations Board v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, cited by petitioner (Pet. 10), plainly is not in conflict with the decision below. In that case the Board found that the employer refused to bargain with the representative of his striking employees on July 23, 1935, and ordered reinstatement of the strikers as of that date, to the displacement of

new employees hired thereafter. In holding that there was no refusal to bargain on July 23, and that the reinstatement order was therefore invalid, the Court pointed out that, while there was a later refusal to negotiate in September, the employer was then "operating with a full complement" of new employees. Since those new employees had been validly hired prior to the September refusal to bargain, they could not be displaced by reinstatement of the strikers, predicated upon that refusal. Accordingly, the Court remarked, restoration of the strikers "could as a practical matter" be effected only upon the basis of some refusal to bargain "before respondent had resumed normal operation of its factory." This was by no means a holding that the strike was not "current" in September so as to relieve the employer of his obligation to bargain with "employees."*

(c) Finally, petitioner contends (Pet. 13–14) that the Act was retroactively, and hence improperly, applied in this case because the common-law status of the strikers as employees was terminated before July 5, 1935, the date the Act

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*That the Court was not deciding any such question is rendered perfectly clear by the fact that no such issue was presented in that case. The sole refusal found by the Board was the July 23rd one; the Board expressly passed the question whether the September refusal was an unfair labor practice. *Matter of Columbian Enameling & Stamping Co.*, 1 N. L. R. B. 181, 194–198, 199.

was approved. A similar argument was made and rejected in *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board,* 91 F. (2d) 134 (C. C. A. 4th), certiorari denied, 302 U. S. 731, and *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; 99 F. (2d) 533, certiorari denied, 306 U. S. 646. Whether or not the strikers retained their status as employees under the common law is of no consequence as long as they satisfied the definition of "employees" under the Act, and as long as petitioner's unfair labor practices occurred, as they did, after the Act took effect. In such a case the Act is merely being applied to an existing situation. As this Court held in *Reynolds* v. *United States,* 292 U. S. 443, 449:

> A statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment.

Accord: *Cox* v. *Hart,* 260 U. S. 427, 435; *New York Central Railroad* v. *United States,* 212 U. S. 500; *Samuels* v. *McCurdy,* 267 U. S. 188, 193; *Ruppert* v. *Caffey,* 251 U. S. 264, 301; *In re Rahrer,* 140 U. S. 545, 564.

Further, the situation here presented, of a strike prior to the effective date of the Act, is no longer of importance in the administration of the Act.

For that reason, also, the question is not worthy of review by this Court.

2. The court below enforced the award of back pay to one striker up to the time when he became unemployable, and also enforced the award of back pay to 21 other strikers up to the time when they may have obtained substantially equivalent employment, which fact, the court held, would bar their reinstatement.[1] Petitioner contends (Pet. 15) that the decision below upholding the award of back pay without reinstatement is in conflict with *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646.

These is no conflict with the *Carlisle* case. The statement of Judge Haney to which petitioner refers (99 F. (2d), at 537) was plainly *dictum*, since the court in that case held that the employees had not obtained other equivalent employment and enforced both the reinstatement and back-pay provisions of the Board's order. It was, moreover, the *dictum* of but a single judge. Judge Stephens, concurring, stated that the question was not before the court and that no opinion concerning it should be expressed (99 F. (2d), at 543), while Judge Wilbur concurred in the result only (99 F. (2d), at 544). The holdings on the point are contrary to petitioner's contention. *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61

[1] The court remanded the proceedings to the Board for further evidence concerning the equivalence of their other employment (*supra*, p. 7).

(C. C. A. 4th); *Republic Steel Corp.* v. *National Labor Relations Board,* 107 F. (2d) 472 (C. C. A. 3rd), certiorari granted limited to another point, No. 14, this Term; *New York Handkerchief Mfg. Co.* v. *National Labor Relations Board,* decided July 11, 1940 (C. C. A. 7th).

3. The Board found that, absent discrimination, all of the strikers would have been restored to work by January 1, 1936, and awarded back pay from that date (R. 916–917, 912–913). Petitioner's contention (Pet. 15–16) that some deduction should have been allowed for the delay in filing charges and in the proceedings thereafter to final order, is confined to the facts of this case and presents no question of general importance justifying review.

Moreover, the action of the Board and of the court below is clearly correct. The statute itself contains no requirement that any deduction be made from back pay awarded, and no compelling equities demanded that the burden of the continuing economic loss caused by petitioner's unfair labor practices be shifted from petitioner to the victims of its discrimination. The Union's delay in filing charges occurred during a period when more than 80 injunction suits had brought the administration of the Act practically to a standstill and had induced the common belief that it was of no avail to resort to proceedings under the Act. In May 1937, promptly after the decisions of this Court had upheld the constitutionality of the Act (*National Labor Relations Board* v. *Jones &*

Laughlin Steel Corp., 301 U. S. 1, and companion cases), the Union filed its charges (R. 4–5). The Board's delay thereafter in arriving at the final order was caused by the tremendous influx of cases which followed upon the *Jones & Laughlin* decision; the litigation of the present case had to run the course dictated by the whole of the work of the Board. Throughout the entire period petitioner had the power to stop the accumulation of back pay by ceasing its discrimination and reinstating the men. The holding of the court below that, in these circumstances, the Board did not abuse its discretion in casting the burden of the resulting loss upon petitioner, rather than upon its innocent employees, is entirely correct.

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any question of general importance. The petition should therefore be denied.

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SEPTEMBER 1940.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Secs. 152, 157, 158, 160, 163) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

SEC. 10. * * *.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and

cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

No. 641

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PHELPS DODGE CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 923–929) is reported in 113 F. (2d) 202. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 837–919) are not yet reported in permanent form but are available in advance sheet form, 19 N. L. R. B., No. 60.

JURISDICTION

The decree of the court below (R. 930–933) was entered on July 26, 1940. The Company's petition for a writ of certiorari, No. 387, was filed on August 30, 1940. The Board's petition for a writ of certiorari, No. 641, was filed on December 21, 1940. Both were granted on January 13, 1941.[1] The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether a refusal to hire applicants for employment, because of their union membership and activity, violates Section 8 (3) and (1) of the National Labor Relations Act.

2. Whether there is substantial evidence supporting the Board's findings (a) that a labor dispute in which the Company was engaged was current when the Act took effect and for a period thereafter, and (b) that during this period the Company refused to reinstate certain strikers because of their union activities. (These findings, if sustained, establish a violation of Section 8 (3) and (1) of the Act even if Question 1 be answered in the negative).

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[1] On October 18, 1940, an order was signed by a justice of this Court extending the time within which to file the petition in No. 641 for 60 days from October 26, 1940.

3. If Question 1 be answered in the affirmative, whether the Board, upon finding that the applicants would have been employed but for their union membership and activity, may, under Section 10 (c) of the Act, require that they be employed with back pay.

4. Whether under Section 10 (c) the Board may order the employment or reinstatement of persons who were discriminated against in violation of Section 8 (3) and (1), but who thereafter obtained "other regular and substantially equivalent employment" within the meaning of Section 2 (3) of the Act.

5. Whether Section 10 (c) prohibits an award of back pay independently of reinstatement.

6. Whether the Board, in making a back-pay award, is required to provide for the deduction of amounts which the recipient could have earned, but did not.

7. Whether the Board's back-pay order is arbitrary or excessive because of the substantial lapse of time between the commission of the unfair labor practices and the issuance of the Board's decision.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon the usual proceedings, the Board issued its findings of fact, conclusions of law, and order

(R. 837–919). The Board's findings may be briefly summarized as follows:[2]

Phelps Dodge Corporation, herein called the Company, is a large producer of copper ore and is extensively engaged in interstate commerce (R. 840–843).

On June 10, 1935, the International Union of Mine, Mill and Smelter Workers, Local No. 30, a labor organization herein called the Union, called a strike and began to picket the Company's mine because the Company had discharged some of its members (R. 844–845). The strike and picketing continued until August 24, 1935, when the Union voted to terminate the strike and disbanded the picket line (R. 845, 848).

Although the strike at first caused a curtailment of production, by June 28 the Company had succeeded in replacing all the strikers and had resumed normal productive operations (R. 845). Subsequently, between August 9 and the termination of the strike on August 24, and at various times thereafter up until the time of the hearing in January 1938, the Company hired some 2,250 additional employees (R. 859, 860, 863). During this extensive hiring the Company consistently refused to take back any of the strikers, because of their strike and union activities, although the strikers applied for reinstatement on three separate occa-

[2] The evidence supporting those of the findings which are challenged is discussed in the Argument.

sions between August 9 and August 24 (R. 845–848, 850–852, 855–856), and practically all of them individually applied thereafter (R. 845, 852–856, 861, 864, 870–905).

The Company likewise refused, because of their membership and activity in the Union, to hire Vernon Dell Curtis and William Daugherty, who had previously worked for the Company but whose employment had terminated prior to the strike (R. 868–870, 906). The Board found that, absent discrimination, the Company would have taken back Curtis and the 38 strikers named in the Board's order by January 1, 1936, and would have hired Daugherty by January 30, 1937 (R. 860–861, 912–914).

Upon these findings, the Board concluded that the 38 strikers ceased work as a consequence of and in connection with a labor dispute which was "current" when the Act became effective on July 5, 1935, that they therefore remained "employees" of the Company under Section 2 (3) of the Act, and that the Company's discriminatory refusal to reinstate the strikers, or to consider them for reinstatement, violated Section 8 (3) and (1) of the Act (R. 862–864). The Board further held, in the alternative, that even if the strikers had ceased to be the Company's "employees" at the time of the discrimination against them, the denial of employment to them, as well as to Curtis and Daugherty, constituted "discrimination in regard to hire" within the meaning of Section 8 (3) (R. 864–865).

Prior to the hearing, 21 of the 38 strikers (R. 932) obtained employment with Shattuck Denn Mining Company; the Board found that neither these strikers (R. 870–871, 909) nor any of the other strikers (R. 867–868, 877–880, 882–883, 889–904, 909) obtained "other regular and substantially equivalent employment" within the meaning of Section 2 (3). The Board also concluded, in the alternative, that if any of the strikers had obtained such employment. it would nevertheless order their reinstatement in order to effectuate the policies of the Act (R. 909).

The Board's order required the Company to cease and desist from its unfair labor practices; to offer reinstatement[3] with back pay to Curtis, Daugherty, and 37 of the 38 strikers; to make whole the remaining striker for any loss of wages suffered by him up to the time when he became unemployable; to reimburse governmental agencies for work-relief payments to the 40 men; and to post notices (R. 915–919).

Thereafter, the Company filed a petition in the court below to review and set aside the Board's order (R. i–viii). The Board answered, requesting enforcement of its order (R. xi–xvii).

The court sustained the Board's findings and order except in the following respects (R. 923–929):

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[3] It is clear that in using the term "reinstatement," the Board intended that it be read as encompassing also "reemployment," "instatement," and "employment" (see R. 909–910).

(1) Following its earlier decision in *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992, the court held that while Curtis and Daugherty were denied employment because of their union affiliations, discrimination against applicants for employment does not violate Section 8 (3) or (1) of the Act (R. 928–929); (2) it held that the Board was without power to order the reinstatement of persons who, after suffering discrimination while "employees" of the Company, obtained other regular and substantially equivalent employment, and that the findings that the strikers employed at Shattuck Denn did not obtain such employment were not supported by the evidence (R. 927);[4] (3) it held that in computing the amount of back pay awarded to each individual, there must be deducted the amount which he "failed without excuse to earn" (R. 928, 931–932).[5] Judge

[4] The court remanded the case to the Board for the adducing of additional evidence concerning the equivalence of employment at Shattuck Denn (R. 927). The Board has not sought review of the holding that the findings of non-equivalence were unsupported (Pet. in No. 641, p. 8, n. 6). In the view we take, the Board had the power, which it exercised alternatively in this case (*supra*, p. 5), to order the reinstatement of the strikers whether or not they had obtained equivalent employment. If this view is correct, the reinstatement order is valid regardless of whether the findings as to substantially equivalent employment are supported by the evidence, and the remand is therefore erroneous and should be reversed.

[5] In addition to the modifications above noted, the court also eliminated the provision for reimbursement of governmental relief agencies, and, on request of the Board, modi-

violates Section 8 (1) by interfering with the self-organization both of the applicants and of those already employed in the plant, to whom the discrimination sounds an open warning of their employer's hostility to unions.

The legislative history of the Act makes it clear that Section 8 (3) means precisely what it says, and was intended to prohibit discrimination in the selection among applicants for employment. Persuasive also is the background of the Act; the practice of blacklisting union men had been a common and notorious means of destroying union organization for many years, and it is scarcely conceivable that Congress, in enacting comprehensive legislation designed to safeguard the rights of self-organization and collective bargaining, intended to leave untouched the means by which the blacklist is made effective.

The apprehension of the court below that the construction for which we contend would compel an employer to hire a union man in preference to a non-union man or *vice-versa* wholly misconceives the position of the Board; the Act does nothing more than rule out membership or non-membership in a union as a permissible criterion of selection, leaving the employer entirely free to use whatever other criteria he would normally utilize.

B

Even if Section 8 (3) is interpreted so as not to prohibit discrimination against applicants for

employment, the Company nevertheless violated the section with reference to the strikers. The evidence supports the Board's findings (1) that the labor dispute in connection with which the men ceased work was current on July 5, 1935, and until August 24, 1935, so that during that period the strikers possessed the status of striking "employees" under Section 2 (3); and (2) that the strikers were refused reinstatement prior to August 24 because of their union activities.

II

The order directing the Company to employ or to reinstate, with back pay, the men discriminated against, may validly be grounded on the discrimination against them as applicants for employment. Even if not thus supportable, the order is nevertheless valid as to the strikers on the basis of the discrimination against them as striking "employees." Nor is the order invalid as to those strikers who obtained "other substantially equivalent employment," within Section 2 (3), subsequent to the discrimination against them.

A

The order requiring employment of the illegally rejected applicants with back pay is valid as an exercise of the Board's power to require "such affirmative action * * * as will effectuate the policies of this Act." It is apparent that no other form of relief is effective to remedy the Company's unfair labor practices.

Power to direct this appropriate relief has not been denied to the Board by the inclusion in Section 10 (c) of the phrase "including reinstatement of employees with or without back pay". Both the form of expression in the statute and the legislative history demonstrate that the phrase is merely illustrative of the type of relief which the Board may direct, and that it does not limit in any way the Board's broad power to direct "such affirmative action * * * as will effectuate the policies of this Act." Compare *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

If our argument is rejected and the phrase "reinstatement of employees with or without back pay" is held to be restrictive, not illustrative, it does not follow that the term "employees" as there used comprehends only those in a proximate employment relation with the particular employer against whom the order is directed. The Act and its legislative history cogently indicate that, except for purposes of Sections 8 (5) and 9 (a) (the collective bargaining provisions), the term "employees" is used throughout the statute, including Section 10 (c), in its generic sense, as meaning members of the working class generally. Thus, the restriction assertedly imposed by the phrase "including reinstatement of employees" upon the Board's power to direct appropriate affirmative relief is in fact no restriction at all. These complexities of construction confirm our primary view that the phrase was

in no way intended to limit the Board's authority under Section 10 (c) to direct whatever affirmative action is appropriate "to effectuate the policies of this Act."

B

The reinstatement order should be upheld as a remedy for the discrimination against the strikers as "employees" even if the Court rejects our contention that the discrimination against the strikers as applicants for employment constitutes an unfair labor practice upon which the order may be validly grounded. As to those of the strikers who did not, after the discrimination against them, obtain "any other regular and substantially equivalent employment" within the meaning of Section 2 (3), the Board's order is clearly an appropriate exercise of its power to require the "reinstatement of employees with or without back pay". *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333.

C

The holding below that those of the men who may have obtained such equivalent employment are beyond the Board's reinstatement power rejects the generic meaning of the term "employees" as used in Section 10 (c) and is based upon the restrictive construction of that section which limits the Board's power to the "reinstatement of employees".

The Board could find that reinstatement of the workers, whether or not they obtained equivalent

employment, constituted "such affirmative action * * * as will effectuate the policies of this Act." It is reasonable to suppose that the deeply coercive effects of wholesale elimination of all union employees can be dissipated only by a demonstration that the Act carries sufficient force to restore to their jobs those who have been penalized for exercising the rights which it guarantees.

III

The court below modified the back-pay order to provide that there be deducted, in the case of each individual, the amount which he "failed without excuse to earn." But the common law doctrine of mitigation of damages has no application in the public proceedings under the Act, and to read it into the Act is to deny to the Board power to make the employees whole.

Further, the modification would cast upon the Board an impossible administrative burden. To require it to launch speculative and time-consuming inquiries into all available employment opportunities and the adequacy of each individual's efforts to support himself would impair the carrying on of the Board's functions. The difficulties of the inquiry far outweigh the presumed necessity for it. Workingmen rarely have sufficient means to sit idly by in the hope of eventual reimbursement; they are compelled by economic circumstances to seek other means of livelihood.

IV

The back-pay order is not "excessive and arbitrary," as the Company contends. While there was considerable delay both in the filing of charges with the Board by the employees and in decision of the case by the Board, the equities do not support the Company's plea that the loss occasioned by its unfair labor practices should be shifted to the employees. The delay in filing charges occurred while widespread attacks upon the Act's constitutionality and the prevalence of suits to enjoin proceedings under the Act discouraged recourse to the Act by employees. The Board did not at that time proceed in mining cases (compare *Carter* v. *Carter Coal Co.*, 298 U. S. 238) so that even if charges had been filed promptly in this case, the delays would not have been avoided.

The delay occasioned by the Board's slow handling of the case after charges were filed is in no way attributable to the employees and affords no basis upon which to penalize them. When the Company chose to ignore the trial examiner's recommendations, although it could have stopped the running of back pay by reinstating the strikers pending the outcome of the case, it assumed the risk of accumulating liability while the litigation ran the course dictated by the whole of the Board's work. That that course was tedious was due to no fault of the Board or the employees, but to the

adventitious circumstance of a tremendous influx of cases after the Act had been sustained by this Court.

ARGUMENT

I

THE COMPANY VIOLATED SECTION 8 (3) AND (1) OF THE ACT WITH RESPECT TO THE STRIKERS AND WITH RESPECT TO CURTIS AND DAUGHERTY, THE TWO APPLICANTS FOR EMPLOYMENT

The Board's conclusion that the Company violated Section 8 (3) and (1) of the Act with respect to the strikers was based upon alternative holdings. Primarily, the Board found (R. 862–864) that the labor dispute in connection with which the strikers ceased work was current on the effective date of the Act, July 5, 1935, and remained current until August 24, 1935, so that at the time of the discriminatory refusal on and after August 9 to consider the strikers for reinstatement they had the status of striking employees under Section 2 (3) of the Act. In the alternative, the Board found (R. 864–865) that if the strikers did not have that status the denial of employment to them on account of union membership and activities nevertheless constituted "discrimination in regard to hire" violative of Section 8 (3). The question whether discrimination in the selection among applicants for employment violates the Act is also presented by the cases of Curtis and Daugherty, who were con-

cededly merely applicants, and who, the Board found (R. 868–870, 906), were refused jobs because of their union membership and activities.*

While the Company contests the factual bases of the Board's primary holding with respect to the strikers, that is, the findings that the labor dispute was current on July 5 and until August 24 and that the strikers were discriminated against during this period, it concedes (Pet. in No. 387, pp. 3, 10) that there is substantial evidence to support the finding that it discriminated against the strikers as applicants for employment after August 24, 1935; it contends however, that such discrimination does not violate the Act. The same contention is advanced as to Curtis and Daugherty; in their cases, too, the Company maintains that such discrimination is not contrary to the prohibitions of the Act. The court below agreed with this view, and set aside the order as to Curtis and Daugherty (R. 928–929), although it upheld the Board's findings of unfair labor practices as to the strikers on the first basis assigned by the Board, i. e., that the labor dispute was still current and therefore they were striking employees under Section 2 (3) at the time they suffered discrimination (R. 925–927).

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* These two men had previously worked for the Company, but had ceased to do so in 1934 (R. 247, 279). Both joined the Union prior to the strike, Curtis picketed, and both, upon application subsequent to the strike, were denied employment (R. 248–250, 280–281, 527, 868–870, 906).

Since consideration of the factual issues pressed by the Company as to the strikers is obviated if, as we contend, discrimination against applicants for employment violates the Act, we shall consider that question first. Secondly, we shall argue that even if it be held that discrimination against applicants for employment does not violate the Act, the Board and the court below correctly held that the Company did illegally discriminate against the strikers as "employees" within the meaning of the Act.

A. BY DISCRIMINATING AGAINST APPLICANTS FOR EMPLOYMENT, THE COMPANY VIOLATED THE ACT

It is the Government's position that Section 8 (3) and (1) of the Act makes it an unfair labor practice to discriminate on the basis of union membership or activities in the selection among applicants for hire. In rejecting this construction the court below followed its earlier decision in *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992. The opposite conclusion was reached and the construction given the Act by the Board was sustained by the Circuit Court of Appeals for the First Circuit in *National Labor Relations Board* v. *Waumbec Mills*, 114 F. (2d) 226, in an able opinion by Judge Magruder.[7] We sub-

[7] Law review discussion uniformly supports the Board's position. 53 Harv. L. R. 141; 37 Mich. L. R. 141; 49 Yale L. J. 953; 35 Ill. L. R. 585; 14 Wis. L. R. 445; 19 North Car. L. R. 240; 9 Geo. Wash. L. R. 362; 19 Boston Univ. L. R. 680; 28 Georgetown L. J. 1003; 18 N. Y. U. Law Quart. Rev. 266; 8 Univ. of Chicago L. R. 149.

mit that the construction of the Act adopted by the court below does violence to the plain terms of Section 8 (3) and disregards the intent of Congress as further shown by the legislative history, purposes, and background of the statute.

Section 8 (3) provides that it is an unfair labor practice for an employer

> By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *

Unless the prohibition against "discrimination in regard to hire" is interpreted as proscribing discrimination in selecting applicants for employment, the words used by Congress are deprived of their "natural meaning." The *Waumbec Mills* case, 114 F. (2d) at 233.

Further, by refusing employment to an applicant because of his union membership or activity, the employer imposes a discriminatory "condition of employment" which discourages union membership. This Court has held that the conditioning of an applicant's employment upon his father's joining a labor organization is "a violation of § 8 (3) of the Act in absence of a valid closed-shop agreement". *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941.

A discriminatory denial of employment also violates Section 8 (1) of the Act, in that it interferes

with, restrains, and coerces employees in the exercise of the rights guaranteed by Section 7. A discriminatory refusal to hire, by sounding an open warning of the employer's hostility to the union, plainly interferes with the self-organization of those already employed. Added to the threat normally implicit in such hostility is the knowledge that their present union activity may lawfully constitute a bar to their future employment. "* * * surely it tends to 'discourage membership in any labor organization' to know that a record of union agitation will prevent one from getting back one's old job." L. Hand, J., dissenting in the *National Casket* case, 107 F. (2d) at 999. And see the *Waumbec Mills* case, 114 F. (2d) at 233. Moreover, the applicant himself may well be an "employee" within the meaning of Section 8 (1), although there is no employment relation subsisting between him and the particular employer who engages in the discrimination. See *infra*, pp. 44–49.

The legislative history of the Act buttresses the conclusion that Congress meant precisely what the language of Section 8 (3) clearly states. The House Committee on Labor stated that that section

> spells out in greater detail the provisions of section 7 (a) prohibiting "yellow-dog" contracts and interference with self-organization. This interference may be present in a variety of situations in this connection, such as discrimination in discharge, lay-off, demotion or transfer, *hire*, forced resignation, or

division of work; in reinstatement or *hire* following a technical change in corporate structure, a strike, lock-out, temporary lay-off, or a transfer of the plant.

Nothing in this subsection prohibits interference with the normal exercise of the right of employers to *select* their employees or to discharge them. All that is intended is that the employer shall not by discriminatory treatment in *hire* or tenure of employment or terms or conditions of employment, interfere with the exercise by employees of their right to organize and choose representatives. It is for this reason that the employer is prohibited from encouraging or discouraging membership in any labor organization by such discrimination. [H. Rept. No. 1147, 74th Cong., 1st Sess., p. 19; italics supplied.] [8]

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[8] See also S. Rept. No. 573, 74th Cong., 1st Sess., p. 11. The House Committee's use of the word "hire" in its usual sense disposes of the suggestion by the court below in the *National Casket* case that "In the connection in which it is used 'hire' may well be a noun meaning wages * * *" (107 F. (2d) at 997). Moreover, "hire" in the latter sense is plainly included in the prohibition against discrimination in regard to "any term * * * of employment".

The Senate committee report recommending passage of a similar bill introduced by Senator Wagner in the previous year, 1934, is further evidence that Congress used the word "hire" to mean the act of hiring. That bill (S. 2926, 78 Cong. Rec. 3444, 73d Cong., 2d Sess.) provided:

"SEC. 5. It shall be an unfair labor practice for an employer * * *:

"(6) To engage in any discriminatory practice as to wage or hour differentials, advancement, demotion, hire, tenure of employment, reinstatement, or any other condition of

And in piloting the bill through the Senate, Senator Walsh, chairman of the Senate Committee, stated, in answer to a question as to the operation of the proviso to Section 8 (3):[9]

> All this bill says is that *no employer may discriminate in hiring a man, whether he belongs to a union or not, and without regard to what union he belongs;* but if an employer wishes to agree and to make a contract of his own volition with his employees to hire only members of a company union or of a trade union, he can do so. [79 Cong. Rec. 7674; italics supplied.]

Similarly, Representative Truax, a member of the House Committee, stated:

> An obnoxious form of interference is the discrimination displayed in hiring employees and the tenure of employment based upon the employees' affiliation with labor organizations that are distasteful to the employer. [79 Cong. Rec. 9717.]

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employment which encourages membership or nonmembership in any labor organization."

In reporting this bill, which was clearly the antecedent of the present Act, the Senate Committee stated:
"An employer, of course, need not hire an incompetent man * * *. But if the right to join or not to join a labor organization is to have any real meaning for an employee, the employer ought not to be free * * * to refuse to hire him merely because of his membership in an organization" (S. Rept. No. 1184, 73d Cong., 2d Sess., p. 6).

[9] That proviso permits closed-shop contracts under carefully defined circumstances. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 75.

The background and purposes of the Act afford further confirmation of the legislative intent. The Act was intended to encourage collective bargaining by guaranteeing the right of self-organization free from employer interference (Section 1). Reports of official investigations and writings of authorities in the field of labor relations establish that the refusal to hire union workers, a policy usually made effective by the use of some form of union blacklist, has for many years been one of the most common and effective weapons wielded by employers determined to suppress union activity.[10]

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[10] See *e. g.*, *Final Report of the Industrial Commission* (1902), Vol. XIX, pp. 82–83; U. S. Anthracite Coal Strike Commission, *Report to the President on the Anthracite Coal Strike of May–October, 1902* (1902), p. 78; Fitch in *Encyclopedia of the Social Sciences* (1935), Vol. II, pp. 578–579; Federal Council of Churches of Christ, *Report on the Industrial Situation at Muscatine, Iowa* (1912); Laidler, *Boycotts and the Labor Movement* (1913), pp. 39–49; United States Commission on Industrial Relations, *Final Report* (U. S. Senate, 64th Cong., 1st Sess., Document No. 415, 1916), Vol. I, p. 118; The Interchurch World Movement, Commission of Inquiry, *Report on the Steel Strike of 1919* (1920), p. 219; New York State Joint Legislative Committee on Housing, *Intermediate Report* (Legislative Document No. 60 (1922), p. 128; Clarence E. Bonnett, "The National Founders' Association" from *Employers' Associations in the United States* (1922), p. 80; Gulick, *Labor Policy of the United States Steel Corporation* (1924), pp. 125–127; Commons and Associates, *History of Labour In the United States* (1926), Vol. I, pp. 362–363, 420–422; Lescobier and Brandeis, *History of Labor in the United States* (1896–1932), Vol. III, pp. 298, 299; Daugherty, *Labor Problems in American Industry* (1938), pp. 389–390; Cummins, *The Labor Problem in the United States* (Second

The blacklist directs an even more serious and effective thrust at the worker's livelihood than does the weapon of discharge; it follows him about when he tries, of necessity, to obtain employment with other employers, perhaps far removed from the scene of his prior work and union activity. A subcommittee of the Senate Committee on Education and Labor (S. Rept. No. 46, 75th Cong., 1st Sess., 1937, p. 8), has described the blacklist as "being probably of all penalties the most ruthless device, since it is intended to produce, and often does produce, permanent loss of livelihood. * * * a blacklisted person may be almost universally barred from working at his given trade."[11] The practice of refusing to hire union members or sympathizers was probably even more widespread than the discharge of union members:[12] the blacklist, in combination with the yellow-dog contract, enabled

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Edition, 1935), p. 351. See, also, Brooks, *When Labor Organizes* (1937), pp. 81–83; U. S. Bureau of Labor, *Investigation of Western Union and Postal Telegraph-Cable Companies* (Senate Doc. No. 725, 60th Cong., 2d Sess., 1909), pp. 39, 41.

[11] "Effectively blacklisting a worker is to commit economic homicide, for the worker who is blacklisted has little opportunity to get a job in the industry for which he is trained." MacDonald, *Labor Problems and the American Scene* (1938), p. 605.

[12] Clark and Simon, *The Labor Movement in America* (1938), pp. 83–84; Daugherty, *Labor Problems in American Industry* (1938), pp. 650–652; United States Commission on Industrial Relations, *Final Report* (U. S. Senate, 64th Cong., 1st Sess., Document No. 415, 1916), Vol. I, p. 18.

an employer to keep his plant entirely free from union members, since he could both refuse to employ union men and could enjoin union organizers from enticing breach of the non-union employment contracts required of employees. *Hitchman Coal Co.* v. *Mitchell*, 245 U. S. 229. Unquestionably knowledge on the part of employees that they might be blacklisted from future employment operated as a powerful deterrent against union membership.

It is no historical accident, then, that when Congress first sought to protect the right of workers to organize, in the Erdman Act of 1898 (30 Stat. 424), it struck at the union blacklist as well as at discriminatory discharge and the yellow-dog contract. Widespread recognition of the evil is also attested by the fact that some 25 states have at one time or another enacted legislation forbidding blacklisting.[13] Legislative attempts to wipe out blacklisting were rendered largely futile, however, by the decision in *Adair* v. *United States*, 208 U. S. 161 (1908), holding unconstitutional the provision of the Erdman Act prohibiting the discharge of employees because of union membership. See also *Coppage* v. *Kansas*, 236 U. S. 1. Legislation forbidding blacklisting was bound to be ineffective "so long as employers were free to discharge or

[13] These statutes are analyzed in Witte, *The Government in Labor Disputes* (1932), pp. 213–218, and in Oakes, *Organized Labor and Industrial Conflicts* (1927), pp. 741–754. See also Note (1937) 37 Columbia L. Rev. 816, 819–820.

refuse to employ any workman who belonged to a union." Commons and Andrews, *Principles of Labor Legislation* (4th Rev. Ed., 1936), p. 408.[14] The obstructive effect of the *Adair* and *Coppage* cases was at last removed in 1930, when this Court, in sustaining the Railway Labor Act of 1926, held that a district court might properly require the reinstatement of persons discriminatorily discharged. *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

In the light of this background it is scarcely conceivable that when Congress enacted comprehensive legislation designed to safeguard the rights of self-organization and collective bargaining, it did not intend to prohibit discrimination on the basis of union membership in the selection of employees, a common practice notoriously effective to destroy self-organization. "If employers are free to pursue a policy of blacklisting applicants with labor union records, then the other prohibitions of the Act are of little worth." The *Waumbec Mills* case, 114 F. (2d) at 233.

Further, it is conceded even by the court below (*National Casket* case, 107 F. (2d) at 997; see also the *Link-Belt* case, *supra*, p. 19), that an offer of employment on condition that the applicant will not join a union, is a violation of Section 8 (3) as

[14] Other authorities are in full accord: Witte, *The Government in Labor Disputes* (1932), pp. 217–218; Magruder, *A Half Century of Legal Influence Upon the Development of Collective Bargaining*, 50 Harv. L. Rev. 1071, 1083–1084.

a "discrimination in regard to * * * any term or condition of employment". And, as pointed out by Judge Magruder in the *Waumbec Mills* case, 114 F. (2d) at 233, "It would be a most extraordinary result if the Act prohibits this milder conduct by an employer and yet permits him to deny employment unconditionally because of an applicant's former union activity."

Moreover, as this Court has recognized (*H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941; *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 409–410), in enacting the present Act, Congress had before it and relied upon the administrative practice under the prior legislation likewise designed to protect the rights of employees to self-organization and collective bargaining. H. Rept. No. 1147, 74th Cong., 1st Sess., pp. 3, 5, 7, 15–18, 20–22, 24; S. Rept. No. 573, 74th Cong., 1st Sess., pp. 2, 8–9, 13, 16, 17. And the first National Labor Relations Board, created to administer Section 7 (a) of the National Industrial Recovery Act apparently drew no distinction between a discriminatory discharge or refusal to reinstate and a discriminatory refusal to employ, but held all such practices forbidden. See, e. g., *Matter of Maujer Parlor Frame Co.*, 1 N. L. R. B. (old) 20; *Matter of Globe Gabbe Corp.*, 2 N. L. R. B. (old) 60; *Matter of Shuster Gaio Corp.*, 2 N. L. R. B. (old) 65.

The court below (the *National Casket* case, 107 F. (2d) at 997) asserted that Section 8 (3) "confers rights upon employees, not upon applicants for employment." On that basis it in effect read out of Section 8 (3) the prohibition against discrimination in regard to hire. Moreover, Section 8 (3) does not state that it is limited to the protection of "employees." And we have already shown that a discriminatory denial of employment to applicants interferes with the self-organization of those already employed (*supra*, pp. 19–20). Cf. *United States Electrical, etc., Workers of America* v. *International Brotherhood of Electrical Workers*, 115 F. (2d) 488, 491 (C. C. A. 2).

The only other basis offered by the court below (the *National Casket* case, 107 F. (2d) at 997) for a construction of Section 8 (3) which distorts its terms and ignores its history, purposes, and background is the apprehension that under a contrary interpretation there would be an illegal discrimination in hire whenever the employer hired any union man or any nonunion man: Section 8 (3) makes it an unfair labor practice to "encourage" union membership through discrimination in hire as well as to "discourage" it through such discrimination. The court's reasoning can be based only upon an assumption that union affiliation or its absence is the only standard of selection for hire; a similar assumption as to selection for discharge would, if valid, render any dismissal a violation of

the Act. The obvious fallacy lies in a failure to recognize that the Act imposes only a limited restriction upon selection; except where a valid closed shop contract exists, the choice may not be on the basis of the presence or absence of union activities or membership, but may be upon the basis of efficiency, personality, or a host of other permissible standards of selection. See the *Waumbec Mills* case, 114 F. (2d) at 234. In short, the Act "does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45. So long as normal, rather than discriminatory, criteria are observed, there is no violation of the Act regardless whether or not the person selected for hire or discharge is a union member.

Finally, it may not be contended that the construction adopted below is necessary to save the constitutionality of Section 8 (3). The proscription of discrimination in hire imposes no restraint on the employer which is qualitatively or quantitatively different from the admittedly valid prohibition against discrimination in discharge. As stated by Judge Learned Hand in his concurring opinion in the court below, "I can see no greater limitation in denying him [the employer] the power to discriminate in hiring, than in discharging" (R. 930). Likewise, the rights of workers intended to be protected by the two restrictions are

identical. In the *Jones & Laughlin* case the Court did not differentiate between the restriction on hiring and that on discharging but considered the constitutionality of the Act upon the assumption that it imposed both upon employers (301 U. S. at 45, 46). See also the *Waumbec Mills* case, 114 F. (2d) at 235–236.

B. THE COMPANY ILLEGALLY DISCRIMINATED AGAINST THE STRIKERS WHILE THEY WERE "EMPLOYEES" WITHIN THE MEANING OF THE ACT

Even if Section 8 (3) is interpreted so as not to prohibit discrimination against applicants for employment, the Board's conclusion that the Company violated that section with reference to the strikers is nevertheless valid. Our argument under Part A, *supra,* concerned the Company's conceded discrimination against the strikers as applicants for employment; the Board likewise found that prior to August 24, 1935, and while the strikers were striking employees under Section 2 (3) of the Act,[15] the Company rejected their applications for reinstatement because of their union membership and activities (*supra,* p. 5). It is not disputed that such discrimination against striking employees violates Section 8 (3) and (1). *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333. The Company's claim is that there is insufficient evidence to support the Board's

[15] Section 2 (3) is set out *infra,* pp. 45, 69.

findings (1) that the labor dispute in connection with which the men ceased work was current on July 5, 1935, and until August 24, 1935, so that during that period the men were striking employees under Section 2 (3); and (2) that the strikers were refused reinstatement prior to August 24, 1935, because of their union activities. We shall consider the validity of these two findings separately.

1. As the court below held (R. 926), the currency of the labor dispute is a question of fact on which the Board's findings are conclusive if supported by substantial evidence. *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 147 (C. C. A. 9), certiorari denied, 304 U. S. 575. The court concurred in the Board's finding (R. 925–927), and we submit that it plainly has the requisite evidentiary support. The strike, called by the Union in protest against discharge of its members, began on June 10, 1935 (R. 100–102, 123–125, 158–159, 164–165, 174, 222–223, 231). (The Act became effective on July 5, 1935.) The strike at first caused a substantial drop in production (R. 663, 583–584). Although by June 28 the Company had replaced all of the strikers by hiring new men and had resumed normal productive operations (R. 530–531, 538, 584–585), the strike activities, including daily picketing of the mine, continued until August 24, when the Union voted to terminate the strike and disbanded the picket line (R. 101, 108, 159, 174–175, 219, 292, 367, 397, 657–659, 669). On August 9 and again on August 23 the Company

conferred with representatives of the Union concerning possible settlement of the strike (R. 106–108, 650–655, 657–658). Throughout this period the Company's officials likewise recognized the continued currency of the strike in their communications with each other (R. 648, 650–655, 657–659, 669).

The Company maintains that since it had replaced the strikers and resumed normal productive operations by June 28, the strike terminated at that time under the common law rule. Whether or not this contention is valid, [16] it does not follow that on July 5, the effective date of the Act, no "current labor dispute" within the meaning of Section 2 (3) and (9) of the Act was in progress between the Company and its employees. The term "labor dispute" as defined in the Act,[17] obviously is not coterminous with "strike." [18] The fundamental

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[16] That it is not, see *Restatement of the Law of Torts*, Chap. 38, Sec. 776 (b). Cf. Note, 84 Univ. of Pennsylvania Law Rev., pp. 771–779.

[17] Section 2 (9): "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

[18] This is clear, were it otherwise doubtful, from the decisions construing the Norris-La Guardia Act and state anti-injunction acts containing substantially the same definition of "labor dispute" as does the National Labor Relations Act. See e. g., *Milk Wagon Drivers' Union* v. *Lake Valley, Inc.*, 311 U. S. 91; *United States* v. *Hutcheson*, No. 43, this Term, decided February 3, 1941; *New Negro Alliance* v. *Sanitary*

characteristic of a "labor dispute" is the presence of a "controversy" concerning some or all of the matters enumerated in Section 2 (9); a strike or lockout is merely one manifestation of such a controversy.[19] Given the continuance of disagreement and conflict, the currency of the dispute at any moment cannot be disproved by any single circumstance, but must rest upon an appraisal of all the circumstances. Indeed, in a case where one important subject of disagreement concerns whether, or the manner in which, the strikers are to be permitted to return to work, the labor dispute cannot be said to have terminated until these matters are finally settled.

In the present case, where the strikers continued picketing and otherwise fully persisted in their efforts to have the Company reinstate them and the eight men whose discharge caused the strike, and where the Company itself continued to nego-

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Grocery Co., 303 U. S. 552; *Levering & Garrigues* v. *Morrin*, 71 F. (2d) 284 (C. C. A. 2), certiorari denied, 293 U. S. 595; *Senn* v. *Tile Layers Protective Union*, 222 Wis. 383, 400; 268 N. W. 270, 272, affirmed, 301 U. S. 468; *Lauf* v. *E. G. Shinner & Co.*, 303 U. S. 323; *American Furniture Co.* v. *Chauffeurs, Teamsters and Helpers Union*, 222 Wis. 338, 268 N. W. 250.

[19] Thus, in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, this Court held that "Under the findings the strike was a consequence of, or in connection with, a current labor dispute as defined in § 2 (9) of the Act." The "labor dispute" in that case consisted of a disagreement between the employer and its employees concerning terms of employment.

tiate with representatives of the strikers who were seeking to settle the dispute, it would be unrealistic to hold that there was no labor dispute simply because the Company had filled the jobs. Certainly the Board could properly find that the labor dispute continued.[20]

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[20] In *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531, 535 (C. C. A. 4), the court, upholding the Board's finding that the labor dispute was current, pointed to "the continued efforts of the strikers" and "their willingness to negotiate," as well as to the fact that the employer had not secured a full complement of employees. See also *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134, 138 (C. C. A. 4), certiorari denied, 302 U. S. 731; *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138, 145, 147 (C. C. A. 9), certiorari denied, 304 U. S. 575. Compare *National Labor Relations Board* v. *Good Coal Co.*, 110 F. (2d) 501 (C. C. A. 6), certiorari denied, 310 U. S. 630; *Baillis* v. *Fuchs*, 283 N. Y. 135, 136. In *McPherson Hotel Co.* v. *Smith*, 127 N. J. Eq. 167, where the jobs of strikers were filled and normal operations resumed, but the amount of business was still affected by continued picketing, the court held that the strike was not terminated and that even if it was the "labor dispute" nevertheless continued within the meaning of the New Jersey Anti-Injunction Act. *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, relied on by the Company (Pet. in No. 387, p. 10), is not in point. In that case the Board found that the employer refused to bargain with the representatives of its striking employees on July 23, 1935, and ordered reinstatement of the strikers as of that date, to the displacement of new employees hired thereafter. In holding that there was no refusal to bargain on July 23, and that the reinstatement order was therefore invalid, the Court pointed out that, while there was a later refusal to negotiate in September, the employer was then "operating with a full complement" of new employees. Since those new em-

Since the labor dispute was current at the time the Act became effective on July 5, 1935, and at the time of the unfair labor practices, the fact that the labor dispute commenced prior to July 5 does not preclude application of the Act. The Circuit Courts of Appeals have uniformly so held [21] and there is no indication either in the Act or its legislative history that Congress intended to deny to commerce the protection which the collective bargaining required by the statute could afford against the burdens occasioned by labor disputes pending when the Act took effect.[22]

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ployees had been validly hired prior to the September refusal to bargain, they could not be displaced by reinstatement of the strikers, predicated upon that refusal. This was by no means a holding that the strike was not "current" in September.

[21] *National Labor Relations Board* v. *National Casket Co.*, 107 F. (2d) 992, 996 (C. C. A. 2); *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4), certiorari denied, 302 U. S. 731; *Standard Lime & Stone Co.* v. *National Labor Relations Board*, 97 F. (2d) 531, 535 (C. C. A. 4); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9), certiorari denied, 304 U. S. 575; 99 F. (2d) 533, certiorari denied, 306 U. S. 646.

[22] There is, plainly, no merit in the contention (Pet. in No. 387, pp. 13–14) that if the strikers in this case are held to be "employees" within the meaning of Section 2 (3), the Act is being given retroactive application. *Reynolds* v. *United States*, 292 U. S. 443, 449; *Cox* v. *Hart*, 260 U. S. 427, 435; *New York Central Railroad* v. *United States*, 212 U. S. 500; *Samuels* v. *McCurdy*, 267 U. S. 188, 193; *Ruppert* v. *Caffey*, 251 U. S. 264, 301; *In re Rahrer*, 140 U. S. 545, 564.

2. The finding that the strikers were discriminatorily refused reinstatement upon application prior to the termination of the strike on August 24, was likewise confirmed by the court below (R. 925) and is amply supported by the evidence. Bateman, the Company's employment manager, testified that during the first week of the strike he received instructions, which were never withdrawn, to "go slow" in reinstating any of the strikers (R. 142, 535). One of the strikers testified that on June 21, Bateman told him to remove his clothes from the locker furnished him by the Company, "because as far as you fellows are concerned, the strike is never going to be ended for you" (R. 298). On August 9, when a State Federation of Labor Committee which was trying to settle the strike requested the Company on behalf of the strikers to reinstate them, the Company replied unequivocally that it would not reinstate "any of the strikers" (R. 655). On August 21, a group of strikers applied to Bateman for individual reinstatement; he replied that "You strikers will never work for the Phelps Dodge Company again" (R. 104–106, 112–115, 159–160, 175–176, 199–200, 207–208, 400.) A final application for reinstatement, made one day before the strike was terminated on August 24, drew the response that "the position of the Company * * * had not changed" (R. 658, 107–108). At the hearing Henrie, the assistant general superintendent of the mine, admitted that at the time of

the August 9 application and at all times thereafter, it was the Company's "policy" not to "put those men back to work" (R. 599–600, 658).

These refusals to permit any of the strikers to return to work occurred at a time when there were jobs available that they could fill. It is stipulated that between August 9 and 24, 21 such positions became available and were filled by hiring newcomers (R. 750–753). It is apparent that the strikers were denied consideration for these positions solely because they had exercised rights guaranteed and protected by the Act (Sections 13, 7, 8 (1)). The Company's apparent assertion (Pet. in No. 387, p. 12) that the strikers were merely refused "mass reinstatement," that such reinstatement was refused because their jobs "had been filled," and that there was no refusal to reinstate them as vacancies occurred disregards the evidence reviewed above. [23]

[23] The findings of discrimination prior to August 24 are buttressed by the Company's steadfast refusals thereafter to give any of the strikers employment in its mine. Between August 24, 1935, and January 1938, when the hearing was held, the Company hired more than 2,000 additional employees (R. 751–752). During this period practically every striker applied for reinstatement, but the Company invariably refused to depart from its avowed policy of barring strikers from its employ. (R. 165–166, 170–171, 176, 181–182, 213, 219, 228–229, 232–233, 236–237, 255, 262, 266, 268–269, 273, 287, 291–292, 299, 303–304, 307, 314–316, 318, 320–321, 324, 333–334, 338, 343–344, 349–350, 353, 358–360, 367–368, 375–378, 388–389, 390, 395–396, 407, 412–413, 425–426, 435–437, 453–455, 465–466, 472, 478–479).

II

THE ORDER REQUIRING THE COMPANY TO EMPLOY OR TO REINSTATE, WITH BACK PAY, THE PERSONS ILLEGALLY DISCRIMINATED AGAINST IS VALID

The Board ordered the Company to employ or to reinstate, with back pay, thirty-seven of the strikers and Curtis and Daugherty. We shall first consider the validity of this order as based exclusively upon the admitted discrimination against Curtis and Daugherty and against the strikers as applicants for employment. Secondly, we point out that, whether or not the order is thus supportable, it is nevertheless valid as to the strikers as a remedy for the Company's discrimination against them as "employees". Thirdly, we argue that the order being otherwise valid it is not invalid as to the men who obtained substantially equivalent employment after the discrimination against them.

A. THE ORDER IS A VALID REMEDY FOR THE COMPANY'S DISCRIMINATION AGAINST APPLICANTS FOR EMPLOYMENT

Section 10 (c) directs the Board to require the employer to cease and desist from unfair labor practices found and

> to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

We submit that under this provision the Board has power to direct the employment with back pay of illegally rejected applicants if such action will

effectuate the policies of the Act in the circumstances of the particular case, and that in this case such an order is appropriate to effectuate the Act's policies.

The Board found (R. 860–861, 912, 913, 914), and the Company does not challenge the findings, that if the Company's illegal discrimination had not occurred, the strikers and Curtis would have been taken back to work by January 1, 1936, and Daugherty by January 30, 1937. (The back pay provided in the Board's order runs from these dates. R. 917, 918). On such findings an order directing the employment of the rejected applicants with back pay does no more than restore the *status quo* which would have existed but for the unfair labor practices. It parallels and is equivalent to the familiar provision requiring the reinstatement with back pay of discharged employees or of employees discriminatorily denied reinstatement following a strike. The reinstatement remedy was referred to by Congress to illustrate a type of affirmative relief contemplated under the Act; further it would constitute relief appropriate to effectuate the Act's policies even if it were not specifically mentioned in Section 10 (c). *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Moreover, this Court has recognized that the Board "could not grant complete relief" in respect of persons discriminated against in reinstatement following a strike "short of ordering that the dis-

crimination be neutralized by their being given their former positions and reimbursed for the loss due to their lack of employment consequent upon the respondent's discrimination." *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348. Equally in the parallel situation of a discriminatory denial of employment, only an offer of employment with remedial back wages will undo the effects of the illegal discrimination and provide effective assurance for the future that workers may safely exercise the organizational rights guaranteed by the Act. "Nothing short of this would be efficacious at all." The *Waumbec Mills* case, 114 F. (2d) at 235.[24]

1. *The example in Section 10 (c) is illustrative, and not restrictive.*—There is no basis for any contention that the inclusion in Section 10 (c) of the phrase "'including reinstatement of employees with or without back pay" operates as a qualification upon the power of the Board to remedy illegal discrimination in hire. The phrase does not purport to be a part of an enumeration implying the exclusion of other similar remedies; indeed the word

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[24] Since the Company does not dispute the Board's findings that it would have employed the men but for their union membership and activities, we need not consider what affirmative relief would be within the Board's discretionary power in a case where it found that the employer discriminatorily refused to consider applicants for employment, but did not find that the applicants would have been hired but for the discrimination.

"including'" imports but a particular instance in a general class. See *Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 125n; *Springer* v. *Philippine Islands*, 277 U. S. 189, 206.

It is further clear from the legislative history that Congress intended that the Board's power to require affirmative action should extend to the remedying of all types of violations, and should be limited solely by the consideration whether its exercise would effectuate the policies of the Act in the circumstances of the particular case. The House Committee on Labor explained that upon finding that an employer has engaged in an unfair labor practice, the Board will issue an order

> requiring such person to cease and desist from such unfair labor practice and to take such affirmative action as will effectuate the policies of the bill; i. e., as defined in section 1, to encourage the practice of collective bargaining and to protect the exercise by the worker of full freedom of association, self-organization, and designation of representatives of his own choosing. The orders will of course be adapted to the needs of the individual case; they may include such matters as refraining from collective bargaining with a minority group, recognition of the agency chosen by the majority for the purposes of collective bargaining, posting of appropriate bulletins, refraining from bargaining with an organization corrupted by unfair labor practices. The most frequent form of affirmative action required in cases of this type is specifically pro-

> vided for, i. e., the reinstatement of employees with or without back pay, as the circumstances dictate. [H. Rept. No. 1147, 74th Cong., 1st Sess., pp. 23–24.] [25]

The phrase in question plainly does not eliminate power to require the other forms of affirmative relief enumerated in the House Report when the Board properly finds, in administering the Act, that they will effectuate its policies. Cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. There is no firmer ground for supposing that a power to require the employment of discriminatorily rejected applicants is precluded, when such relief will further the Act's purposes.

This conclusion is indicated, we think, by this Court's opinion in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240. There the Board argued that even if the employee status of the strikers had been terminated by discharge, its power under Section 10 (c) was not confined to the "reinstatement of employees" but included the reinstatement of former employees if

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[25] In the *Waumbec Mills* case, 114 F. (2d) at 235, the court, upon consideration of the legislative history, concluded that "the phrase ['including reinstatement of employees with or without back pay'] was more probably inserted out of abundant caution to illustrate a type of relief appropriate to the commonly recurring unfair labor practice of discriminatory discharge, rather than put in for the purpose of limiting the remedial powers of the Board." See, also, Note (1939) 14 Wisconsin Law Review 445, 447–451.

such action was appropriate to effectuate the Act's policies (see 306 U. S. 252–253, 257). The majority of the Court, after holding that the strikers had ceased to be "employees" (pp. 254–257), disapproved of the order not on the ground that reinstatement of former employees was a type of affirmative action that was beyond the Board's power even if it did effectuate the Act's policies, but solely on the basis that the order would not effectuate the policies of the Act in the circumstances of that case (pp. 257–258).[26]

The court below in the present case and some of the other circuit courts of appeals (cases cited *infra*, p. 51) have regarded Section 10 (c) as restricting the exercise of the reinstatement power to persons who remained employees as defined in Section 2 (3). In practice, however, even those courts have not applied consistently the view that the phrase "reinstatement of employees with or without back pay" prohibits other similar relief. For if this phrase limits reinstatement to "employees," it might be expected that it would also limit back pay to employees who were directed reinstated. The Company so argues here with respect to the men who the court below held could not be reinstated because they may have obtained

[26] That the majority considered that the order would be valid if it met that test is indicated by the concurring opinion of Mr. Justice Stone, who thought that the order should be set aside as to the discharged strikers solely on the ground that they were not "employees" (pp. 263–265).

substantially equivalent employment and with respect to the striker who was given back pay up to the time he became unemployable, but who was, of course, not reinstated. But the court below rejected this view, as seeming "to diminish unduly the scope of the Board's broad power to take some of the economic pinch out of labor troubles" (R. 927). Likewise the Fourth Circuit, while taking the restrictive view concerning the Board's power of reinstatement, has held that back pay may be awarded without reinstatement. *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61, 66. The only expression to the contrary is a dictum by one judge of the Ninth Circuit. *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 537, certiorari denied, 306 U. S. 646. Back pay without reinstatement has been enforced in numerous cases without discussion, although in some of these cases is was in fact challenged by counsel for the employer.[27]

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[27] E. g., *Link-Belt Co.* v. *National Labor Relations Board*, 110 F. (2d) 506, 511–512 (C. C. A. 7), Board order enforced in full, Nos. 235, 236, this Term, decided January 6, 1941; *National Labor Relations Board* v. *Crystal Spring Finishing Co.*, 116 F. (2d) 669 (C. C. A. 1); *National Labor Relations Board* v. *Acme Air Appliance Co.*, decided February 3, 1941 (C. C. A. 2); *Burk Bros.* v. *National Labor Relations Board*, decided February 3, 1941 (C. C. A. 3); *National Labor Relations Board* v. *Dow Chemical Co.*, decided February 6, 1941 (C. C. A. 6); *New York Handkerchief Co.* v. *National Labor Relations Board*, 114 F. (2d) 144, 147–148 (C. C. A. 7), certiorari denied, No. 493, this Term; *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667, 669, 672 (C. C. A. 8).

2. *"Employees" is used in Section 10 (c) to mean members of the working class generally, and not employees of a particular employer.*—If the argument just made be rejected, and it is held that the phrase "reinstatement of employees" in Section 10 (c) is restrictive and not illustrative, it by no means follows, as the majority below assume, that "employees" is used in Section 10 (c) to mean only those persons whose employment relation with the particular employer has been preserved under the definition in Section 2 (3). That section provides:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment * * *.

It will at once be seen that this provision defines "employee" in two different and quite inconsistent ways. It first provides that "the term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise * * *."[28] "Employee" is thus first defined in its generic sense, as meaning members of the working class generally.

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[28] The Act "explicitly states otherwise" only in Sections 8 (5) and 9 (a). See *infra*, pp. 47–48.

But the definition then proceeds to say that "employee" shall include any person whose work has ceased in connection with any current labor dispute or because of any unfair labor practice "and who has not obtained any other regular and substantially equivalent employment". If this part of the definition is meant to exclude from the "employee" category persons who have obtained other equivalent employment, it is manifestly inconsistent with the first part of the definition, which encompasses the employees of any employer, except where the Act specifically states otherwise.

The explanation is to be found in the legislative history. The reports of the Congressional committees show that the definition of "employee" in Section 2 (3) was intended to serve two purposes. First, it was intended, together with the definition of "labor dispute" in Section 2 (9),[29] to recognize "that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer."[30] H. Rept. No. 1147, 74th Cong., 1st

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[29] Sec. 2 (9) is set out *infra*, p. 69.

[30] The definition of "labor dispute" in Section 2 (9) was taken from the Norris-LaGuardia Act. (Senate Report, p. 7.) In this Act, as in the Norris-LaGuardia Act, it was intended to prevent an interpretation restricting the Act, as this Court had restricted § 20 of the Clayton Act, to relations between an employer and his own employees. (Senate Report, p. 7; *United States* v. *Hutcheson*, No. 43, this Term, decided February 3, 1941.) This fact, and the fact that the definition of "employee" in Section 2 (3) was intended to be read

Sess., p. 9. See also S. Rept. No. 573, 74th Cong., 1st Sess., pp. 6, 7. To this end "employee" was defined in the generic sense. Second, the definition was intended to preserve the employee status of striking workers and of workers deprived of work because of an unfair labor practice. Senate Report, pp. 6–7. For this purpose there was inserted the latter part of the definition: "and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment".

In the light of this history the proper interpretation of Section 2 (3) is evident. The first part of the definition, i. e., that "employee" means members of the working class, applies, as provided, "unless the Act explicitly states otherwise". The second part, on the other hand, applies whenever it becomes necessary to ascertain whether "the proximate relation of employer and employee" continues to exist between workers and a particular employer. Such an inquiry becomes pertinent under the Act only in connection with determining the representation of employees for collective bargaining pursuant to Section 9 (a) and (b), and in determin-

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with the definition of "labor dispute" in Section 2 (9), show that Congress intended the generic meaning of employee, that is "the business class or clan to which the parties litigant respectively belong." *Duplex Printing Co.* v. *Deering*, 252 Fed. 722, 748 (C. C. A. 2), reversed, 254 U. S. 443.

ing whether an employer has refused to bargain collectively with the representatives of "his employees" in violation of Section 8 (5). In each of these cases it must be determined what persons are employees of the particular employer or employers some or all of whose employees comprise the unit decided by the Board to be appropriate under Section 9 (b). Cf. *Marlin-Rockwell Corp.* v. *National Labor Relations Board,* decided January 6, 1941 (C. C. A. 2). Then, and only then, does the latter part of the definition in Section 2 (3) come into play.

The meaning of the provision in Section 2 (3) that "employee" shall mean employees of any employer "unless the Act explicitly states otherwise" thus becomes clear. The Act explicitly states otherwise in Section 8 (5), which prohibits an employer from refusing to bargain collectively with the representatives of "his" employees, subject to the provisions of Section 9 (a). Section 9 (a) provides that representatives designated by a majority of the employees in an appropriate unit shall be the exclusive bargaining representatives of all the employees in the unit, provided that any employee or group of employees shall have the right to present grievances to "their" employer. These two provisions, employing the words "his" and "their", are the only ones in the Act explicitly stating that they refer to employees of a particular employer rather than employees generally.

Other than this there is no indication in the Act that the latter part of the definition in Section 2 (3)

has any significance. And as observed by Judge Learned Hand, concurring in the present case (R. 929), a definition of "employees" in Section 7 "as limited to persons actually employed at the moment, * * * would certainly mutilate the Act." This is equally true of course of the interpretation of "employees" in Section 10 (c) and in Section 8, except 8 (5).

Thus, even if the words "including reinstatement of employees" in Section 10 (c) be taken as restrictive, and Section 2 (3) is looked to to determine what persons are within the expressly granted remedy, we arrive at the conclusion that Congress intended "employees" so broadly that the supposed restriction is in fact no restriction at all. As already indicated, however, we do not think that the proper approach to the problem is through these technicalities of construction. Rather their very complexity indicates what is otherwise plain from the legislative history and from the terms of Section 10 (c), that the phrase "including reinstatement of employees with or without back pay" was in no way intended to limit the authority of the Board to direct "such affirmative action * * * as will effectuate the policies of this Act."

B. IN ANY EVENT, THE ORDER IS A VALID REMEDY FOR THE COMPANY'S DISCRIMINATION AGAINST THE STRIKERS AS "EMPLOYEES"

The strikers ordered reinstated fall into two groups: those who did not obtain "any other regu-

lar and substantially equivalent employment" within the meaning of Section 2 (3) after the discrimination against them, and (2) those who did obtain such employment.[31] As to those who did not obtain other equivalent employment, it is plain that the order constitutes an appropriate exercise of the Board's power to require the "reinstatement of employees with or without back pay". *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 47–48; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318; *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941. This is so wholly aside from the proposition, just argued in Point A above, that the order may be supported as to the strikers, as well as to Curtis and Daugherty, on the discrimination against them as applicants for employment.

As to the second group of strikers, the only question is whether the order, being otherwise valid, is invalid as to them because they obtained other substantially equivalent employment. This question is treated in our discussion under Point C below.

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[31] Inasmuch as the Board has not sought review of the lower court's holding that there is insufficient evidence to support the Board's findings that none of the strikers obtained regular and substantially equivalent employment, our argument assumes as a premise that those of the strikers as to whom a remand was ordered did in fact obtain such employment.

C. THE ORDER IS NOT INVALID AS TO THE MEN WHO OBTAINED SUBSTANTIALLY EQUIVALENT EMPLOYMENT

The court below held, in accord with decisions of two other circuit courts of appeals,[32] that the strikers who obtained equivalent employment subsequent to the discrimination ceased to be "employees" within the meaning of Section 2 (3) and therefore could not be reinstated (R. 927).[32a] If, as we have argued, the term "employees" is used in its generic sense in Section 10 (c), so that workers are not excluded from the term upon obtaining other substantially equivalent employment, the decision below is, of course, incorrect. Putting aside that contention, it is apparent that the holding below is based upon the restrictive construction of Section 10 (c) which would limit the Board's power to direct affirmative relief to the "reinstatement of employees with or without back pay". We have argued that that construction is incorrect, and that the Board's power is subject to the sole limi-

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[32] *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61, 65–66 (C. C. A. 4); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 538–539 (C. C. A. 9), certiorari denied, 306 U. S. 646 (employer's petition). Compare *National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. (2d) 263, 269 (C. C. A. 3). But cf. *Continental Oil Co.* v. *National Labor Relations Board*, 113 F. (2d) 473, 435 (C. C. A. 10), pending argument herewith, No. 413, this Term.

[32a] Since it held that discrimination against applicants for employment did not violate Section 8 (3), the court had no occasion to consider whether the obtainment of equivalent employment would preclude an order directing the employer to employ the rejected applicants.

tation that its exercise must "effectuate the policies of this Act." Assuming that to be so, we now address ourselves to the question whether the Board could properly find that the reinstatement order will effectuate the Act even as to those workers who obtained equivalent employment.

The issue reduces itself to whether the Board, in the exercise of its judgment and discretion "in choosing the particular affirmative relief to be ordered" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265), could reasonably determine that the restoration of the men who obtained equivalent employment to the positions from which they had been discriminatorily excluded by the Company would effectuate the Act's policies. We submit that the Board could so determine. A contention that the normal remedy for discriminatory exclusion from work becomes inappropriate merely because the victim is satisfactorily situated elsewhere, would, if accepted, reduce the "policies of this Act" which the affirmative relief authorized by Section 10 (c) is designed to effectuate, to mere vindication of private rights and restitution for private wrongs, which they plainly are not. Section 1; H. Rept. No. 1147, 74th Cong., 1st Sess., p. 24; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 266, 269; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 362. Section 10 (c) empowers the Board to require such action as is appropriate to restore conditions permitting free

exercise of the rights of self-organization and collective bargaining.[33] In a case, such as the present one, where the employer has excluded from its employ every worker who dared to exercise the rights guaranteed in the statute, the danger associated with joining a labor organization is cogently impressed upon every employee of the employer. The Board may reasonably believe that these deeply coercive effects upon all the employees in a plant may be dissipated only by a demonstration that the Act carries sufficient force to restore to their jobs those who have been penalized for exercising the rights which it guarantees.

Necessity almost always compels a worker who has been discharged to seek the best available other employment. By elimination of the union leaders, or of the leaders in an organizational campaign barely under way, the employer may abruptly terminate all exercise of the right of self-organization in his plant and then rely upon the victims' necessity of earning a livelihood elsewhere for assurance that he is permanently rid of them. See Note, 49 Yale L. J. 953, 954. The economic forces set in motion by the employer thus may, under the view taken by the court below, serve to preclude the

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[33] *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7, 10, 12; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 250.

only remedy effective to restore the freedom which the employer's unfair labor practices have destroyed. But the Board's power extends "to the prevention of [the employer's] enjoyment of any advantage which he has gained by violation of the Act". *National Licorice Co.* v. *National Labor Relations Board,* 309 U. S. 350, 364. Specifically, it should plainly include the neutralization of "any prestige he may have for ridding his organization of those who oppose his attempt * * * to destroy their right to organize." *National Labor Relations Board* v. *American Potash & Chemical Corp.,* 113 F. (2d) 232, 235 (C. C. A. 9).

In sum, we submit that the obtainment of equivalent employment by a discriminatorily excluded employee does not in itself remove the basis upon which the Board may reasonably conclude that his reinstatement is appropriate to effectuate the policies of the Act. The conclusion is warranted that the Company's complete destruction of the right of self-organization in its plant through wholesale elimination of all union members can be undone only by reinstatement of those excluded.

III

THE MODIFICATION OF THE BACK-PAY ORDER TO REQUIRE DEDUCTION OF THE AMOUNT WHICH EACH INDIVIDUAL "FAILED WITHOUT EXCUSE TO EARN" IS IMPROPER

The court below modified the back-pay order by providing that there be deducted from such pay, in the case of each individual, the amount which he

"failed without excuse to earn".[34] The rationale of this modification is that "There is no reason to suppose that Congress intended to have those who had unlawfully been deprived of their jobs maintained in idleness beyond the period when they had an opportunity to do work they were fitted to perform. They were bound to use reasonable efforts to find work and to keep employed. It is only to the extent that their earnings were diminished after they made such efforts that they are entitled to be made whole" (R. 928).

Thus, the court has read into the Board's express power to direct the payment of back pay (Section 10 (c)) the doctrine of mitigation of damages applicable in suits at common law for breach of employment contracts. That doctrine plainly has no application under the Act, as the Circuit Court of Appeals for the Ninth Circuit has held. *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2) 533, 539–540 (C. C. A. 9), certiorari denied, 306 U. S. 646. See *National Labor Relations Board* v. *West Kentucky Coal Co.*, 116 F. (2d) 816, 821, (C. C. A. 6). No "private right of action" to recover back pay is contemplated by the Act.

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[34] While the opinion might be read as meaning that this deduction is required only in the case of persons who obtained but voluntarily relinquished other employment (R. 928), the decree, settled after notice and argument by the Board that it should be so limited, requires the unqualified deduction noted in the text in the case of every individual (R. 931–932).

Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U. S. 261, 267–268; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 362. A back pay order does not award "damages" but constitutes "a public reparation order" designed to further the public interests expressed in the Act. *Agwilines, Inc.* v. *National Labor Relations Board*, 87 F. (2d) 146, 150–151 (C. C. A. 5). For these purposes, the Act authorizes the Board to remedy the effects of unfair labor practices by requiring the employer "to make good to the employees what they had lost" as a result of the discrimination against them. *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7, 13. In the present case the employees have sustained definite, measurable losses of pay, the difference between the wages they would have received from the Company except for its unfair labor practices and the amount which they did in fact earn elsewhere. The modification below denies to the Board power "to make the employees whole." The *Republic Steel* case, 311 U. S. at p. 9.

Further, it is apparent that the modification would place upon the Board an impossible administrative burden. Particularly in a case like the present, involving back pay accruing over a number of years to a large number of men, it would be a tremendous task to ascertain, in each instance, the employment opportunities available in the lines of work which each man was qualified to perform,

and to inquire into the intensity and good faith of the efforts made by each to support himself. To require such an inquiry in each of the hundreds of individual cases each year in which the Board directs an award of back pay, would seriously impair the carrying on of the Board's functions. We do not believe that it was the intent of Congress to preclude effective administration of the Act by requiring the Board to dissipate its energies in time-consuming and speculative inquiries into earnings which were not made but were arguably possible.

The opinion below contains no indication of how it is to be proved that the worker "failed without excuse to earn" certain sums of money. In the case of a Chicago machinist, the employer may conceivably be free to adduce evidence concerning employment opportunities at each machine shop in that city during a given period of time, and to intimate that the opportunity and the applicant might have met had he exerted greater efforts. Nor is the nature of the "excuse" provable at all clear: a certain number of miles walked per day might offer clear vindication, but failure of a literate applicant to discover an advertisement in a paper other than the one he usually takes might occasion serious doubts. Examination into multifarious questions of this type would plainly constitute an arduous task.

The difficulties to which such inquiry would give rise far outweigh the fancied necessity for it. It is

a matter of common knowledge that working men are rarely persons of independent or accumulated means. They are unable to remain without employment for long periods after discrimination against them in the hope that eventually they will be reimbursed for their idleness. They are required by forces more potent than the modification below to seek means of livelihood. If they find it, the proceeds accrue to the benefit of the employer in the form of deductions from the back-pay order. To go further and require a burdensome inquiry in each case so as to care for the rare instance in which the employee finds it possible to remain idle is not warranted.

IV

THE BACK PAY ORDERED BY THE BOARD IS NOT "EXCESSIVE AND ARBITRARY"

The Company contends that because of the length of time elapsing between the unfair labor practices and the Board's order, the back pay award is "excessive and arbitrary" and should have been modified by the court below (Pet. in No. 387, pp. 15–16). No specific modification is suggested, the argument apparently being that the reviewing court should devise some form of equitable relief. The court below rejected the claim, stating that it was not satisfied that the Company had a "just grievance" on the score of delay (R. 929).

The time schedule of this proceeding is as follows: The unfair labor practices occurred in August 1935. The charge was filed with the Board on May 25, 1937 (R. 4–5) and an amended charge on December 18, 1937 (R. 6–9). The Board's complaint issued on January 10, 1938 (R. 10–27). A hearing before a trial examiner was held from January 27 to February 3, 1938. The trial examiner filed his Intermediate Report on March 16, 1938 (R. 687–717). The Company filed exceptions (R. 718–746) and on April 1, 1938, requested oral argument before the Board (R. 747), which took place on May 5, 1938 (R. 749). A stipulation concerning certain additional matters was entered into on January 11, 1939 (R. 750–828) and on June 23, 1939, the Company requested further oral argument before the Board (R. 831). Such argument was set for July 11, 1939, but upon the request of counsel for the Company was postponed to July 20, 1939, when it took place (R. 832–836). The Board's Decision and Order was issued on January 16, 1940 (R. 837–919).

The back pay awarded to each of the strikers except Waters runs from January 1, 1936, the date by which the Board found that all of the strikers would have been reinstated had no discrimination occurred, to the time when an offer of reinstatement is made or the employee is placed on a preferential list (R. 917–918, 912–914). Waters is to receive

back pay from January 1, 1936 to January 1, 1937, when he became unemployable (R. 917–918, 913). Curtis and Daugherty are to receive back pay from January 1, 1936 and January 30, 1937, respectively, which are the dates by which the Board found they would have been hired in the absence of discrimination, to the date of compliance, but excluding in each case the period from March 16, 1938 to January 16, 1940, during which the trial examiner's recommendation that the complaint be dismissed as to these two men was outstanding (R. 918–919, 913–914).

The assertion, upon which the Company's entire contention is grounded, that back pay has been "accumulating in large amounts" (Pet. in No. 387, p. 16), is not readily verifiable. By May 1937 approximately half of the strikers had obtained positions with the Shattuck Denn Mining Company at wages equal to those paid by the Company, and others of the strikers also obtained work elsewhere (R. 866–906); these other earnings are deductible from the back pay provided in the order (R. 917–918). Further large deductions from the amounts which the Company is required to pay will probably result from elimination of the "work relief" provision. *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7.

In any event, and assuming that equitable pleas may be advanced against the Board's exercise of a power specifically granted by Section 10 (c) of

the Act,[35] we submit that the plea must fail in this case for the reason that the equities are not clearly pointed in the employer's favor. Hence, and in view of the Board's wide discretion under Section 10 (c) (see cases cited, *supra*, pp. 52–53), it may be doubted whether any delay on the part of the strikers or the Board would warrant the overturning of the Board's refusal to shift from the Company to the workers the burden of loss resulting from the unfair labor practices. Certainly a stronger showing than the Company can make in this case is a prerequisite to such a result.

The Company does not attribute to the workers delay after the charges were filed with the Board, but asserts that the first period of delay, from January 1, 1936 (when back pay commences in the case of all except Daugherty) to May 25, 1937, resulted directly from the failure of the employees to file charges until the latter date. But the widespread attacks upon the constitutionality of the Act[36] prior

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[35] If the Company's claim is in the nature of laches it is not available in this proceeding brought by an agency of the Federal Government. *Chesapeake & Delaware Canal Co.* v. *United States*, 250 U. S. 123; *Board of Commissioners* v. *United States*, 308 U. S. 343; *National Labor Relations Board* v. *Nebel Knitting Co.*, 103 F. (2d) 594 (C. C. A. 4).

[36] See, *e. g.*, American Liberty League, National Lawyers' Committee, *Report on the Constitutionality of the National Labor Relations Act* (1935); S. Rept. No. 6, Pt. 5, 76th Cong., 1st Sess., *Labor Policies of Employers Association, Part III, The National Association of Manufacturers*, p. 125; *id. Part I, The National Metal Trades Association*, p. 59.

to the decisions of this Court in April 1937 sustaining it, including the institution of more than eighty suits for injunctions against the Board or its representatives,[37] discouraged employees from instituting proceedings under the Act.[38] Reliance upon the Act appeared to be particularly futile in regard to mining enterprises such as that operated by the Company (Compare *Carter* v. *Carter Coal Co.*, 298 U. S. 238), and, although the Board at all times maintained that the Act applied to enterprises of that type if their stoppage would affect commerce, it did not proceed upon charges filed in mining cases

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[37] See, *e. g.*, *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Newport News Shipbuilding & Dry Dock Co.* v. *Schauffler*, 303 U. S. 54. See, also, Gelhorn and Linfield, *Politics and Labor Relations*, *N. L. R. B. Procedure*, 39 Columbia L. Rev. 339; *First Annual Report of the National Labor Relations Board* (1936), pp. 46–47; *Report of the Proceedings of the Fifty-seventh Annual Convention of the American Federation of Labor*, 1937, address of J. Warren Madden, Chairman, National Labor Relations Board, p. 231; *Report of the Proceedings of the Fifty-sixth Annual Convention of the American Federation of Labor*, 1936, address of Edwin S. Smith, Member, National Labor Relations Board, p. 414; *id.*, *Report of the Executive Council*, p. 157; Brooks, *Unions of Their Own Choosing* (1939), pp. 122–123; Keir, *Labor Problems from Both Sides* (1938), p. 211.

[38] See *Report of the National Executive Committee of the American Newspaper Guild*, in *The Guild Reporter*, May 15, 1936, p. 10, characterizing proceedings by employees before the Board as nothing more "than a means of publicizing their cause." See also, Daugherty, *Labor Problems In American Industry* (1938), p. 937; Brooks, *Unions of Their Own Choosing* (1939), p. 122–123; Howard, *Annual Report to the International Typographical Union for the Fiscal Year Ending June 20, 1936*, p. 7.

prior to the decisions of this Court upholding the Act. Even had the employees filed charges promptly, therefore, the delays prior to May 25, 1937, would not have been avoided.

It is not contended that the employees could have done anything about the delays ensuing between the filing of charges on May 25, 1937, and the issuance of the Board's order on January 16, 1940: the claim as to this period must be that the back pay which the statute authorizes should be diminished in this case because of slowness on the part of the tribunal before which the employees laid their case, rather than because of any fault on the part of the employees. But delay is an incident of litigation, whether before courts or administrative bodies. When the Company chose, in March 1938, to contest the findings of the trial examiner that it had illegally discriminated against the strikers and to disregard his recommendations that they be reinstated with back pay, it assumed the risk of accumulating liability while the litigation ran the course dictated by the whole of the work of the administrative agency and, thereafter, of the courts. The Company could have avoided that risk by reinstating the strikers pending determination of its claim that it was under no obligation to do so. It chose instead to run the risk against whose fruition it now complains.

Nor were the delays on the Board's part capricious, as the Company appears to assume. The

tremendous influx of new proceedings after the decisions of this Court upholding the Act literally overwhelmed the Board's staff, adjusted in size and operation to the previous calendars.[39] Although the process of presentation and decision was greatly speeded up,[40] a tremendous backlog of un-

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[39] The statistics on cases pending during the year 1937 demonstrate the increase of work after the Supreme Court decisions on April 12: January, 424; February, 497; March, 593; April, 855; May, 1,471; June, 2,059; July, 2,633; August 3,017; September, 3,251; October, 3,507; November, 3,516; December, 3,445. The increase was steady during 1938, reaching a high of 4,101 cases in December. By June 1939 there were 4,211 cases pending.

[40] The hearings held before trial examiners of the Board during 1937 were as follows: January, 10; February, 9; March, 12; April, 9; May, 16, June, 35; July, 64; August, 67; September, 51; October, 78; November, 98; December 97. In March 1938, 116 hearings were conducted, in June 1938, 98.

Decisions issued by the Board during 1937, by months, were as follows: January, 3; February, 1; March, 7; April, 3; May, 7; June, 18; July, 13; August, 21; September, 21; October, 24; November, 18; December, 39. For 1938 the corresponding figures are: January, 37; February, 63; March, 52; April, 39; May, 53; June, 58; July, 49; August, 24; September, 40; October, 31; November, 58; December, 57. The highest monthly totals were 84 in October 1939 and 94 in March 1940. The totals of cases closed, through decision and in other ways, by months during 1937, were as follows: January, 119; February, 122; March, 143; April, 216; May, 448; June, 697; July, 769; August, 738; September, 758; October, 797; November, 913; December, 682. The corresponding figures for 1938 were: January, 854; February, 531; March, 711; April, 592; May, 740; June, 589; July, 548; August, 630; September, 522; October, 594; November, 548; December, 481.

decided cases rapidly accumulated.[41] Despite the acute problem thus occasioned, the Board's record on the question of delays compares favorably with those of other administrative agencies and of the federal district courts.[42] Others than the Company suffered disadvantages from the Board's crowded dockets: the rights guaranteed by the Act are peculiarly subject to destruction if not afforded the prompt protection which Congress intended (Section 10 (i)) and the employees in this and other cases were forced to wait long for redress of the wrongs done them.

There is, in short, no sound basis for a contention that the continuing economic loss initially caused by the Company's determination to rid itself of union men should be shifted to the employees, who are certainly less responsible for it than the one whose illegal conduct is the root of the entire proceeding. We submit that it was not arbitrary for the Board and the court below to reject suggested curtailment of the proper and normal relief against unfair practices of this type and thus to make the relief incomplete as well as late.

CONCLUSION

For the reasons stated, we submit that the judgment below should be affirmed in No. 387 (the Com-

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[41] On July 1, 1937, 2,054 cases were before the Board in various stages. By July 1, 1938, this figure had increased to 3,781.

[42] *Hearings before the Special Committee to Investigate National Labor Relations Board, House of Representatives* (76th Cong., 3rd Sess.), Vol. II, pp. 546–550.

pany's petition) and reversed in No. 641 (the Board's petition), and that the case should be remanded to the court below with directions to enforce the order of the Board without modification except as to its work relief and notice provisions (see *supra*, note 5, pp. 7-8).

Respectfully submitted.

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MARCH 1941.

APPENDIX

NATIONAL LABOR RELATIONS ACT

(Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. v, Sec. 151, *et seq.*)

AN ACT To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa-

tives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C. Supp., VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing

upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin [so in original] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative

action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

* * * * *

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

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SUPREME COURT OF THE UNITED STATES.

Nos. 387, 641.—October Term, 1940.

Phelps Dodge Corporation, Petitioner, 387 *vs.* National Labor Relations Board. National Labor Relations Board, Petitioner, 641 *vs.* Phelps Dodge Corporation.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 28, 1941.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The dominating question which this litigation brings here for the first time is whether an employer subject to the National Labor Relations Act may refuse to hire employees solely because of their affiliations with a labor union. Subsidiary questions grow out of this central issue relating to the means open to the Board to "effectuate the policies of this Act", if it finds such discrimination in hiring an "unfair labor practice". Other questions touching the remedial powers of the Board are also involved. We granted a petition by the Phelps Dodge Corporation and a cross-petition by the Board, 311 U. S. —, —, to review a decision by the Circuit Court of Appeals for the Second Circuit, 113 F. (2d) 202, which enforced the order of the Board, 19 N. L. R. B. No. 60, with modifications. The main issue is intrinsically important and has stirred a conflict of decisions. *National Labor Relations Board* v. *Waumbec Mills*, 114 F. (2d) 226.

The source of the controversy was a strike, begun on June 10, 1935, by the International Union of Mine, Mill and Smelter Workers at Phelps Dodge's Copper Queen Mine, Bisbee, Arizona. Picketing of the mine continued until August 24, 1935, when the strike terminated. During the strike, the National Labor Relations Act came into force. Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. § 151 *et seq.* The basis of the Board's conclusion that the Corporation

had committed unfair labor practices in violation of § 8(3) of the Act was a finding, not challenged here, that a number of men had been refused employment because of their affiliations with the Union. Of these men, two, Curtis and Daugherty, had ceased to be in the Corporation's employ before the strike but sought employment after its close. The others, thirty-eight in number, were strikers. To "effectuate the policies" of the Act, § 10(c), the Board ordered the Corporation to offer Curtis and Daugherty jobs and to make them whole for the loss of pay resulting from the refusal to hire them, and it ordered thirty-seven of the strikers reinstated with back pay, and the other striker made whole for loss in wages up to the time he became unemployable. Save for a modification presently to be discussed, the Circuit Court of Appeals enforced the order affecting the strikers but struck down the provisions relating to Curtis and Daugherty.

First. The denial of jobs to men because of union affiliations is an old and familiar aspect of American industrial relations. Therefore, in determining whether such discrimination legally survives the National Labor Relations Act, the history which led to the Act and the aims which infuse it give direction to our inquiry. Congress explicitly disclosed its purposes in declaring the policy which underlies the Act. Its ultimate concern, as well as the source of its power, was "to eliminate the causes of certain substantial obstructions to the free flow of commerce". This vital national purpose was to be accomplished "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association". § 1. Only thus could workers ensure themselves economic standards consonant with national well-being. Protection of the workers' right to self-organization does not curtail the appropriate sphere of managerial freedom; it furthers the wholesome conduct of business enterprise. "The Act", this Court has said, "does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them". But "under cover of that right", the employer may not "intimidate or coerce its employees with respect to their self-organization and representation." When "employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge". *Labor Board* v.

Jones & Laughlin, 301 U. S. 1, 45, 46. This is so because of the nature of modern industrialism. Labor unions were organized "out of the necessities of the situation. . . . Union was essential to give laborers opportunities to deal on equality with their employer". Such was the view, on behalf of the Court, of Chief Justice Taft, *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 209, after his unique practical experience with the causes of industrial unrest as co-chairman of the National War Labor Board. And so the present Act, codifying this long history, leaves the adjustment of industrial relations to the free play of economic forces but seeks to assure that the play of those forces be truly free.

It is no longer disputed that workers cannot be dismissed from employment because of their union affiliations. Is the national interest in industrial peace less affected by discrimination against union activity when men are hired? The contrary is overwhelmingly attested by the long history of industrial conflicts, the diagnosis of their causes by official investigations, the conviction of public men, industrialists and scholars.[1] Because of the Pullman strike, Congress in the Erdman Act of 1898 prohibited inroads upon the workingman's right of association by discriminatory practices at the point of hiring.[2] Kindred legislation has been put on the statute books of more than half the states.[3] And

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[1] United States Industrial Commission, Final Report (1902) p. 892; Anthracite Coal Strike Commission, Report to the President on the Coal Strike of May-October, 1902, S. Doc. No. 6, 58th Cong., Spec. Sess., p. 78; Laidler, Boycotts and the Labor Struggle (1913) p. 39 *et seq.*; United States Commission on Industrial Relations, Final Report (1916) S. Doc. No. 415, 64th Cong., 1st Sess., p. 118; Interchurch World Movement, Commission of Inquiry, Report on the Steel Strike of 1919 (1920) pp. 27, 209, 219; Bonnet, Employers' Associations in the United States (1922) pp. 80, 296, 550; Gulick, Labor Policy of the United States Steel Corporation (1924) pp. 125-27; Cummins, The Labor Problem in the United States (2d ed. 1935) p. 351; Bureau of Labor Investigation of Western Union and Postal Telegraph-Cable Companies (1909) S. Doc. No. 725, 60th Cong., 2d Sess., pp. 39-41; S. Rep. No. 46, Part 1, 75th Cong., 1st Sess., p. 8.

[2] 30 Stat. 424; see United States Strike Commission, Report on the Chicago Strike of June-July, 1894, S. Doc. No. 7, 53d Cong., 3d Sess.; Olney, Discrimination Against Union Labor—Legal? (1908) 42 Amer. L. Rev. 161.

[3] Ala. Code Ann. (1928) § 3451; Ark., Acts of 1905, Act 214, p. 545; Cal. Labor Code (1937) §§ 1050-54; Colo. Stat. Ann. (1935) c. 97, §§ 88, 89, 93; Conn. Gen. Stat. (1930) §§ 6210-11; Fla. Comp. Gen. Laws Ann. (1927) § 6606; Ill. Ann. Stat. (1935) c. 38, § 139; Ind. Stat. Ann. (1933) §§ 40-301, 40-302; Iowa Code (1939) §§ 13253-54; Kan. Gen. Stat. (1935) §§ 44-117, 44-118, 44-119; Me. Laws (1933) c. 108; Minn. Stat. (1927) § 10378; Miss. Code Ann. (1927) §§ 9271-74; Mo. Rev. Stat. (1939) § 4643; Mont. Rev. Code Ann. (1935) §§ 3093-94; Nev. Comp.

during the late war the National War Labor Board concluded that discrimination against union men at the time of hiring violated its declared policy that "The right of workers to organize in trade-unions and to bargain collectively . . . shall not be denied, abridged, or interfered with by the employers in any manner whatsoever".[4] Such a policy is an inevitable corollary of the principle of freedom of organization. Discrimination against union labor in the hiring of men is a dam to self-organization at the source of supply. The effect of such discrimination is not confined to the actual denial of employment; it inevitably operates against the whole idea of the legitimacy of organization. In a word, it undermines the principle which, as we have seen, is recognized as basic to the attainment of industrial peace.

These are commonplaces in the history of American industrial relations. But precisely for that reason they must be kept in the forefront in ascertaining the meaning of a major enactment dealing with these relations. To be sure, in outlawing unfair labor practices Congress did not leave the matter at large. The practices condemned "are strictly limited to those enumerated in section 8", S. Rep. No. 573, 74th Cong., 1st Sess., p. 8. Section 8(3) is the foundation of the Board's determination that in refusing employment to the two men because of their union affiliations Phelps Dodge violated the Act. And so we turn to its provisions that "It shall be an unfair labor practice for an employer . . . By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization".

Unlike mathematical symbols, the phrasing of such social legislation as this seldom attains more than approximate precision of definition. That is why all relevant aids are summoned to deter-

Laws (1929) §§ 10461-63; N. M. Stat. Ann. (1929) §§ 35-4613, 35-4614, 35-4615; New York Labor Law § 704(2), (9); N. C. Code Ann. (1939) §§ 4477-78; N. D. Comp. Laws Ann. (1913) § 9446; Okla. Stat. Ann. (1937) tit. 40, §§ 172-73; Ore. Comp. Laws Ann. (1940) §§ 102-806, 102-807; Tex. Stat. (1936) arts. 1616-1618; Utah Rev. Stat. Ann. (1933) §§ 49-5-1, 49-5-2; Va. Code (1936) § 1817; Wash. Rev. Stat. Ann. (1932) § 7599; Wis. Stat. (1939) § 343.682. See (1937) 37 Col. L. Rev. 816, 819; Witte, The Government in Labor Disputes (1932) pp. 213-18.

[4] Awards of the National War Labor Board: Sloss-Sheffield Steel & Iron Co., Docket No. 12. See also Omaha & Council Bluffs Street Ry., Docket No. 154; Smith & Wesson Co., Docket No. 273. Cf. Gregg, The National War Labor Board (1919) 33 Harv. L. Rev. 39.

mine meaning. Of compelling consideration is the fact that words acquire scope and function from the history of events which they summarize. We have seen the close link between a bar to employment because of union affiliation and the opportunities of labor organizations to exist and to prosper. Such an embargo against employment of union labor was notoriously one of the chief obstructions to collective bargaining through self-organization. Indisputably the removal of such obstructions was the driving force behind the enactment of the National Labor Relations Act. The prohibition against "discrimination in regard to hire" must be applied as a means towards the accomplishment of the main object of the legislation. We are asked to read "hire" as meaning the wages paid to an employee so as to make the statute merely forbid discrimination in one of the terms of men who have secured employment. So to read the statute would do violence to a spontaneous textual reading of § 8(3) in that "hire" would serve no function because, in the sense which is urged upon us, it is included in the prohibition against "discrimination in regard to . . . any term or condition of employment". Contemporaneous legislative history,[5] and, above all, the background of industrial experience forbid such textual mutilation.

The natural construction which the text, the legislative setting and the function of the statute command, does not impose an obligation on the employer to favor union members in hiring employees. He is as free to hire as he is to discharge employees. The statute does not touch "the normal exercise of the right of the employer to select its employees or to discharge them". It is directed solely against the abuse of that right by interfering with the countervailing right of self-organization.

We have already recognized the power of Congress to deny an employer the freedom to discriminate in discharging. *Labor Board v. Jones & Laughlin*, 301 U. S. 1. So far as questions of constitu-

[5] Rather clearly the House Committee which reported the bill viewed the word "hire" as covering the situation before us. H. R. Rep. No. 1147, 74th Cong., 1st Sess., p. 19. The Chairman of the Senate Committee expressly stated during the debate that "no employer may discriminate in hiring a man whether he belongs to a union or not, and without regard to what union he belongs [except where there is a valid closed shop agreement]". 79 Cong. Rec. 7674. For further materials bearing on the legislative history see the able opinion of Judge Magruder in National Labor Relations Board v. Waumbec Mills, 114 F. (2d) 226.

tionality are concerned we need not enlarge on the statement of Judge Learned Hand in his opinion below that there is "no greater limitation in denying him [the employer] the power to discriminate in hiring than in discharging". The course of decisions in this Court since *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, have completely sapped those cases of their authority. *Pennsylvania R. R.* v. *Labor Board*, 261 U. S. 72; *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548; *Virginian Ry.* v. *Federation*, 300 U. S. 515; *Labor Board* v. *Jones & Laughlin*, *supra*.

Second. Since the refusal to hire Curtis and Daugherty solely because of their affiliation with the Union was an unfair labor practice under § 8(3), the remedial authority of the Board under § 10(c) became operative. Of course it could issue, as it did, an order "to cease and desist from such unfair labor practice" in the future. Did Congress also empower the Board to order the employer to undo the wrong by offering the men discriminated against the opportunity for employment which should not have been denied them?

Reinstatement is the conventional correction for discriminatory discharges. Experience having demonstrated that discrimination in hiring is twin to discrimination in firing, it would indeed be surprising if Congress gave a remedy for the one which it denied for the other. The powers of the Board as well as the restrictions upon it must be drawn from § 10(c), which directs the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act". It could not be seriously denied that to require discrimination in hiring or firing to be "neutralized", *Labor Board* v. *Mackay Co.*, 304 U. S. 333, 348, by requiring the discrimination to cease not abstractly but in the concrete victimizing instances, is an "affirmative action" which "will effectuate the policies of this Act". Therefore, if § 10(c) had empowered the Board to "take such affirmative action as will effectuate the policies of this Act", the right to restore to a man employment which was wrongfully denied him could hardly be doubted. Even without such a mandate from Congress this Court compelled reinstatement to enforce the legislative policy against discrimination represented by the Railway Labor Act. *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S.

548.[6] Attainment of a great national policy through expert administration in collaboration with limited judicial review must not be confined within narrow canons for equitable relief deemed suitable by chancellors in ordinary private controversies. Compare *Virginian Ry.* v. *Federation*, 300 U. S. 515, 552. To differentiate between discrimination in denying employment and in terminating it, would be a differentiation not only without substance but in defiance of that against which the prohibition of discrimination is directed.

But, we are told, this is precisely the differentiation Congress has made. It has done so, the argument runs, by not directing the Board "to take such affirmative action as will effectuate the policies of this Act", *simpliciter*, but, instead, by empowering the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act". To attribute such a function to the participial phrase introduced by "including" is to shrivel a versatile principle to an illustrative application. We find no justification whatever for attributing to Congress such a casuistic withdrawal of the authority which, but for the illustration, it clearly has given the Board. The word "including" does not lend itself to such destructive significance. *Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 125, note.

Third. We agree with the court below that the record warrants the Board's finding that the strikers were denied reemployment because of their union activities. Having held that the Board can neutralize such discrimination in the case of men seeking new employment, the Board certainly had this power in regard to the strikers. And so we need not consider whether the order concerning the strikers should stand, as the court below held it should, even though that against Curtis and Daugherty would fall.

Fourth. There remain for consideration the limitations upon the Board's power to undo the effects of discrimination. Specifically, we have the question of the Board's power to order employment in cases where the men discriminated against had obtained "substantially equivalent employment". The Board as a matter

[6] An injunction had been granted against interference with the workers' self-organization and reinstatement was ordered in contempt proceedings after employees had been discharged for union activities. Surely, a court of equity has no greater inherent authority in this regard than was conveyed to the Board by the broad grant of all such remedial powers as will, from case to case, translate into actuality the policies of the Act.

of fact found that no such employment had been obtained, but alternatively concluded that, in any event, the men should be offered employment. The court below, on the other hand, in harmony with three other circuits, *Mooresville Cotton Mills* v. *National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4th); *National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. (2d) 263 (C. C. A. 3rd); *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), ruled that employment need not be offered any worker who had obtained such employment, and since the record as to some of the strikers who had gone to work at the Shuttuck Denn Company was indecisive on this issue, remanded the case to the Board for further findings. This aspect of the Board's authority depends on the relation of the general remedial powers conferred by § 10(c) to the provisions of § 2(3).

The specific provisions of the Act out of which the proper conclusion is to be drawn should be before us. Section 10(c), as we already know, authorizes the Board "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act". The relevant portions of Section 2(3) follow: "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment".

Merely as a matter of textual reading these provisions in combination permit three possible constructions: (1) a curtailment of the powers of the Board to take affirmative action by reading into § 10(c) the restrictive phrase of § 2(3) regarding a worker "who has not obtained any other regular and substantially equivalent employment"; (2) a completely distributive reading of § 10(c) and § 2(3), whereby the factor of "regular and substantially equivalent employment" in no way limits the Board's usual power to require employment to be offered a worker who has lost employment because of discrimination; (3) an avoidance of this either-or reading of the statute by pursuing the central clue to the Board's powers—effectuation of the policies of the Act—and in that light appraising the relevance of a worker's having obtained "substantially equivalent employment".

Denial of the Board's power to order opportunities of employment in this situation derives wholly from an infiltration of a portion of § 2(3) into § 10(c). The argument runs thus: § 10(c) specifically refers to "reinstatement of employees"; the latter portion of § 2(3) refers to an "employee" as a person "who has not obtained any other regular and substantially equivalent employment"; therefore, there can be no reinstatement of an employee who has obtained such employment. The syllogism is perfect. But this is a bit of verbal logic from which the meaning of things has evaporated. In the first place, we have seen that the Board's power to order an opportunity for employment does not derive from the phrase "including reinstatement of employees with or without back pay", and is not limited by it. Secondly, insofar as any argument is to be drawn from the reference to "employees" in § 10(c), it must be noted that the reference is to "employees", unqualified and undifferentiated. To circumscribe the general class, "employees", we must find authority either in the policy of the Act or in some specific delimiting provision of it.

Not only is the Act devoid of a comprehensive definition of "employee" restrictive of § 10(c) but the contrary is the fact. The problem of what workers were to be covered by legal remedies for assuring the right of self-organization was a familiar one when Congress formulated the Act. The policy which it expressed in defining "employee" both affirmatively and negatively, as it did in § 2(3), had behind it important practical and judicial experience. "The term employee", the section reads, "shall include any employee, and shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise. . . ." This was not fortuitous phrasing. It had reference to the controversies engendered by constructions placed upon the Clayton Act and kindred state legislation in relation to the functions of workers' organizations and the desire not to repeat those controversies. Cf. *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552. The broad definition of "employee", "unless the Act explicitly states otherwise", as well as the definition of "labor dispute" in § 2(9), expressed the conviction of Congress "that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer". H. R. Rep. No.

1147, 74th Cong., 1st Sess., p. 9; see also S. Rep. No. 573, 74th Cong., 1st Sess., pp. 6, 7.

The reference in § 2(3) to workers who have "obtained regular and substantially equivalent employment" has a rôle consonant with some purposes of the Act but not one destructive of the broad definition of "employee" with which § 2(3) begins. In determining whether an employer has refused to bargain collectively with the representatives of "his employees" in violation of § 8(5) and § 9(a) it is of course essential to determine who constitute "his employees". One aspect of this is covered by § 9(b) which provides for determination of the appropriate bargaining unit. And once the unit is selected, the reference in § 2(3) to workers who have obtained equivalent employment comes into operation in determining who shall be treated as employees within the unit.

To deny the Board power to neutralize discrimination merely because workers have obtained compensatory employment would confine the "policies of this Act" to the correction of private injuries. The Board was not devised for such a limited function. It is the agency of Congress for translating into concreteness the purpose of safeguarding and encouraging the right of self-organization. The Board, we have held very recently, does not exist for the "adjudication of private rights"; it "acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining". *National Licorice Co.* v. *Labor Board*, 309 U. S. 350, 362; and see *Amalgamated Workers* v. *Edison Co.*, 309 U. S. 261. To be sure, reinstatement is not needed to repair the economic loss of a worker who, after discrimination, has obtained an equally profitable job. But to limit the significance of discrimination merely to questions of monetary loss to workers would thwart the central purpose of the Act, directed as that is toward the achievement and maintenance of workers' self-organization. That there are factors other than loss of wages to a particular worker to be considered is suggested even by a meager knowledge of industrial affairs. Thus, to give only one illustration, if men were discharged who were leading efforts at organization in a plant having a low wage scale, they would not unnaturally be compelled by their economic circumstances to seek and obtain employment elsewhere at equivalent wages. In such a situation, to deny the Board power to

wipe out the prior discrimination by ordering the employment of such workers would sanction a most effective way of defeating the right of self-organization.

Therefore, the mere fact that the victim of discrimination has obtained equivalent employment does not itself preclude the Board from undoing the discrimination and requiring employment. But neither does this remedy automatically flow from the Act itself when discrimination has been found. A statute expressive of such large public policy as that on which the National Labor Relations Board is based must be broadly phrased and necessarily carries with it the task of administrative application. There is an area plainly covered by the language of the Act and an area no less plainly without it. But in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration. The exercise of the process was committed to the Board, subject to limited judicial review. Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy. On the other hand, the power with which Congress invested the Board implies responsibility—the responsibility of exercising its judgment in employing the statutory powers.

The Act does not create rights for individuals which must be vindicated according to a rigid scheme of remedies. It entrusts to an expert agency the maintenance and promotion of industrial peace. According to the experience revealed by the Board's decisions, the effectuation of this important policy generally requires not only compensation for the loss of wages but also offers of employment to the victims of discrimination. Only thus can there be a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination. But even where a worker has not secured equivalent employment, the Board, under particular circumstances, may refuse to order his

employment because it would not effectuate the policies of the Act. It has, for example, declined to do so in the case of a worker who had been discharged for union activities and had sought re-employment after having offered his services as a labor spy. *Matter of Thompson Cabinet Company*, 11 N. L. R. B. 1103, 1116-17.

From the beginning the Board has recognized that a worker who has obtained equivalent employment is in a different position from one who has lost his job as well as his wages through an employer's unfair labor practice. In early decisions, the Board did not order reinstatement of workers who had secured such equivalent employment. See *Matter of Rabhor Company, Inc.*, 1 N. L. R. B. 470, 481; *Matter of Jeffery-De Witt Insulator Company*, 1 N. L. R. B. 618, 628. It apparently focussed on the absence of loss of wages in determining the applicable remedy. But other factors may well enter into the appropriateness of ordering the offending employer to offer employment to one illegally denied it. Reinstatement may be the effective assurance of the right of self-organization. Again, without such a remedy industrial peace might be endangered because workers would be resentful of their inability to return to jobs to which they may have been attached and from which they were wrongfully discharged. On the other hand, it may be, as was urged on behalf of the Board in *Mooresville Cotton Mills* v. *National Labor Relations Board*, 97 F. (2d) 959, 963, that, in making such an order for reinstatement the necessity for making room for the old employees by discharging new ones, as well as questions affecting the dislocation of the business, ought to be considered. All these and other factors outside our domain of experience may come into play. Their relevance is for the Board, not for us. In the exercise of its informed discretion the Board may find that effectuation of the Act's policies may or may not require reinstatement. We have no warrant for speculating on matters of fact the determination of which Congress has entrusted to the Board. All we are entitled to ask is that the statute speak through the Board where the statute does not speak for itself.

The only light we have on the Board's decision in this case is its statement that, if any of the workers discriminated against had obtained substantially equivalent employment, they should be offered employment "for the reasons set forth in" *Matter of*

Eagle-Picher Mining & Smelting Co., 16 N. L. R. B. 727, 833. But in that case the Board merely concluded that § 2(3) did not deny it the power to order reinstatement; it did not consider the appropriateness of its exercise. Thus the Board determined only the dry legal question of its power, which we sustain; it did not consider whether in employing that power the policies of the Act would be enforced. The court below found, and the Board has not challenged the finding, that the Board left the issue of equivalence of jobs at the Shattuck Denn Company in doubt, and remanded the order to the Board for further findings. Of course, if the Board finds that equivalent employment has not been obtained, it is within its province to require offers of reemployment in accordance with its general conclusion that a worker's loss in wages and in general working conditions must be made whole. Even if it should find that equivalent jobs were secured by the men who suffered from discrimination, it may order employment at Phelps Dodge if it finds that to do so would effectuate the policies of the Act. We believe that the procedure we have indicated will likewise effectuate the policies of the Act by making workable the system of restricted judicial review in relation to the wide discretionary authority which Congress has given the Board.

From the record of the present case we cannot really tell why the Board has ordered reinstatement of the strikers who obtained subsequent employment. The Board first found that the men had not obtained substantially equivalent employment within the meaning of § 2(3); later it concluded that even if they had obtained such employment it would order their reinstatement. It did so, however, as we have noted, merely because it asserted its legal power so to do. When the court below held that proof did not support the Board's finding concerning equivalence of employment at Shattuck Denn and remanded the case to the Board for additional evidence on that issue, the Board took this issue out of the case by expressly declining to ask for its review here.

The administrative process will best be vindicated by clarity in its exercise. Since Congress has defined the authority of the Board and the procedure by which it must be asserted and has charged the federal courts with the duty of reviewing the Board's orders (§ 10(e) and (f)), it will avoid needless litigation and make for

effective and expeditious enforcement of the Board's order to require the Board to disclose the basis of its order. We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board.

Fifth. As part of its remedial action against the unfair labor practices, the Board ordered that workers who had been denied employment be made whole for their loss of pay. In specific terms, the Board ordered payment to the men of a sum equal to what they normally would have earned from the date of the discrimination to the time of employment less their earnings during this period. The court below added a further deduction of amounts which the workers "failed without excuse to earn", and the Board here challenges this modification.

Making the workers whole for losses suffered on account of an unfair labor practice is part of the vindication of the public policy which the Board enforces. Since only actual losses should be made good, it seems fair that deductions should be made not only for actual earnings by the worker but also for losses which he willfully incurred. To this the Board counters that to apply this abstractly just doctrine of mitigation of damages to the situations before it, often involving substantial numbers of workmen, would put on the Board details too burdensome for effective administration. Simplicity of administration is thus the justification for deducting only actual earnings and for avoiding the domain of controversy as to wages that might have been earned.

But the advantages of a simple rule must be balanced against the importance of taking fair account, in a civilized legal system, of every socially desirable factor in the final judgment. The Board, we believe, overestimates administrative difficulties and underestimates its administrative resourcefulness. Here again we must avoid the rigidities of an either-or-rule. The remedy of back pay, it must be remembered, is entrusted to the Board's discretion; it is not mechanically compelled by the Act. And in applying its authority over back pay orders, the Board has not used stereotyped formulas but has availed itself of the freedom given it by Congress to

attain just results in diverse, complicated situations.[7] See (1939) 48 Yale L. J. 1265. The Board has a wide discretion to keep the present matter within reasonable bounds through flexible procedural devices. The Board will thus have it within its power to avoid delays and difficulties incident to passing on remote and speculative claims by employers, while at the same time it may give appropriate weight to a clearly unjustifiable refusal to take desirable new employment. By leaving such an adjustment to the administrative process we have in mind not so much the minimization of damages as the healthy policy of promoting production and employ-

[7] In accordance with the Board's general practice, deductions were made in the present case for amounts earned during the period of the back pay award. But the deductions have been limited to earnings during the hours when the worker would have been employed by the employer in question. Matter of Pusey, Maynes & Breish Co., 1 N. L. R. B. 482; Matter of National Motor Bearing Co., 5 N. L. R. B. 409. And only "net earnings" are deducted, allowance being made for the expense of getting new employment which, but for the discrimination, would not have been necessary. Matter of Crossett Lumber Co., 8 N. L. R. B. 440.

Even though a strike is caused by an unfair labor practice the Board does not award back pay during the period of the strike. Matter of Sunshine Hosiery Mills, 1 N. L. R. B. 664. Employees who are discriminatorily discharged are treated as strikers if during a strike they refuse an unconditional offer of reinstatement. Matter of Harter Corp., 8 N. L. R. B. 391. Originally back pay was ordered from the date of application for reinstatement, Matter of Sunshine Hosiery Mills, *supra*, but later orders have started back pay five days after application. Matter of Tiny Town Togs, 7 N. L. R. B. 54.

If there is unjustified delay in filing charges before the Board, a deduction is made for the period of the delay. Matter of Inland Lime & Stone Co., 8 N. L. R. B. 944. Similar action is taken when a case is reopened after having been closed or withdrawn. Matter of C. G. Conn, Ltd., 10 N. L. R. B. 498. And if the trial examiner rules in favor of the employer and the Board reverses the ruling, no back pay is ordered for the period when the examiner's ruling stood unreversed. Matter of E. R. Haffelfinger Company, 1 N. L. R. B. 760; and see the order in the present case.

The Board has refused to order any back pay where discriminatory discharges were made with honest belief that they were required by an invalid closed-shop contract. Matter of McKesson & Robbins, Inc., 19 N. L. R. B. No. 85.

If the business conditions would have caused the plant to be closed or personnel to be reduced, back pay is awarded only for the period which the worker would have worked in the absence of discrimination. Matter of Ray Nichols, Inc., 15 N. L. R. B. 846. At times fluctuations in personnel so complicate the situation that a formula has to be devised for the distribution of a lump sum among the workers who have been discriminated against. Matter of Eagle-Picher Mining & Smelting Co., 16 N. L. R. B. 727.

The rate of pay used in computing awards is generally that at the time of discrimination, but adjustments may be made for subsequent changes. Matter of Lone Star Bag & Bagging Co., 8 N. L. R. B. 244; cf. Matter of Acme Air Appliance Co., 10 N. L. R. B. 1385. Normal earnings in tips or bonuses have been taken into account. Matter of Club Troika, 2 N. L. R. B. 90; Matter of Central Truck Lines, 3 N. L. R. B. 317.

ment. This consideration in no way weakens the enforcement of the policies of the Act by exerting coercion against men who have been unfairly denied employment to take employment elsewhere and later, because of their new employment, declaring them barred from returning to the jobs of their choice. This is so because we hold that the power of ordering offers of employment rests with the Board even as to workers who have obtained equivalent employment.

But though the employer should be allowed to go to proof on this issue, the Board's order should not have been modified by the court below. The matter should have been left to the Board for determination by it prior to formulating its order and should not be left for possible final settlement in contempt proceedings.

Sixth. Other minor objections to the Board's order were found without substance below. After careful consideration we agree with this disposition of these questions, and do not feel that further discussion is required.

The decree below should be modified in accordance with this opinion, remanding to the Board the two matters discussed under *Fourth* and *Fifth* herein, for the Board's determination of these issues.

So ordered.

Mr. Justice ROBERTS took no part in the consideration or disposition of the case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 387, 641.—October Term, 1940.

387 — Phelps Dodge Corp., Petitioner, *vs.* National Labor Relations Board,

641 — National Labor Relations Board, Petitioner, *vs.* Phelps Dodge Corporation.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 28, 1941.]

Mr. Justice Murphy.

While I fully approve the disposition of the first three issues in the opinion just announced, I cannot assent to the modification of that part of the Board's order which required reinstatement of certain employees, or to the limitation imposed on the Board's power to make back pay awards.

First. The Board is now directed to reconsider its order of reinstatement merely because, in the course of its recital, it stated that even if the employees in question had secured other substantially equivalent employment it would nevertheless order their reinstatement for the reasons set forth in *Matter of Eagle-Picher Mining & Smelting Co.*, 16 N. L. R. B. 727.[1] There is neither claim nor evidence that reinstatement will not effectuate the policies of the Act. There is no suggestion that the order the Board issued was wrong or beyond its power. That order is challenged only because the statement and reference to the *Eagle-Picher* case are said to demonstrate that the Board ordered reinstatement mechanically due to a misconception of its functions under the

[1] The entire paragraph in which this statement appears reads: "We have found that the respondent has discriminated in regard to hire and tenure of employment of certain individuals named above. In accordance with our usual practice we shall order the reinstatement or the reemployment of such individuals. The respondent contends that the Board lacks power to order the reinstatement of any striker who has obtained other regular and substantially equivalent employment. We have found that none of the strikers discriminated against has obtained other regular and substantially equivalent em-

statute, and that it did not consider whether reinstatement would effectuate the policies of the Act.

Even if it be assumed that this recital imports an inaccurate appraisal of the Board's power, an assumption which I believe is without justification, modification of its order is not a necessary consequence. The question before us is whether the order the Board issued was within its power. There is no occasion now to determine what disposition should be made of an order which was not an exercise of the Board's administrative discretion, or to infer that the Board must investigate the substantial equivalency of other employment before it may order reinstatement. Suffice to say, the Board found that certain employees had been the objects of unfair labor practices and that it would effectuate the policies of the Act to order their reinstatement. It expressly rested its order upon those findings.

The circumstances occasioning the latter finding are convincing evidence that the Board not only was required to but did exercise discretion in the formulation of its order of reinstatement. Throughout the hearing the employer's counsel sought to show by cross examining them that the complaining employees were not entitled to reinstatement. Shortly after that examination commenced, the trial examiner requested the Board's attorney to state the theory upon which he contended that those employees should be reinstated. Considerable testimony was offered to show the working conditions, hours, rates of pay, continuity of operation, etc., of mines in which the witnesses had secured other employment.

All this was in the record certified to the Board. Accompanying it was the contention of the employer that reinstatement should be denied for various reasons. The Board explicitly considered the contention, among others, that reinstatement would provoke fur-

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ployment within the meaning of the Act. Nevertheless, even if any striker had obtained such employment, we would, for the reasons set forth in Matter of Eagle-Picher Mining & Smelting Co., still order reinstatement by the respondent."

It is to be noted, of course, that in the Eagle-Picher case the Board's remarks were made in answer to the argument advanced here, that § 2(3) narrows the application of the term "employees" in § 10(c).

It is worth noting, too, that in that case the Board stated: "Further to effectuate the purposes and policies of the Act, and as a means of removing and avoiding the consequences of the respondents' unfair labor practices, we shall, in aid of our cease and desist order, order the respondents to take certain affirmative action, more particularly described below." 16 N. L. R. B. 727, 831.

ther disputes and discord among the employees rather than promote labor peace. It also considered the contention that many of the employees had obtained other substantially equivalent employment, making both general and specific findings concerning it.[2] Finally, it concluded that the policies of the Act would be effectuated by ordering the employer to tender reinstatement to designated employees.

That its order of reinstatement was more than a perfunctory exercise of power is pointedly manifest from the Board's own statements. Answering the employer's contention that reinstatement might foster discord among the employees, the Board declared: "We cannot but consider the difficulties of adjustment envisaged in the foregoing testimony [upon which the employer relied] as conjectural and insubstantial, especially in view of the lapse of time since the strike. However, even assuming that the asserted resentment of non-strikers towards strikers and picketers persists, *the effectuation of the policies of the Act patently requires*[3] the restoration of the strikers and picketers to their status quo before the discrimination against them."

In discussing its proposed order, the Board said: "Having found that the respondent has engaged in unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action *designed to effectuate the policies of the Act*[4] and to restore as nearly as possible the condition which existed prior to the commission of the unfair labor practices."

And in its formal order, the Board stated: "Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation . . . shall: . . . 2. Take the following affirmative action *which the Board finds will effectuate the policies of the Act*:[5] (a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions

[2] The Board found that none of the employees had obtained other substantially equivalent employment. The Circuit Court of Appeals reversed this finding in part. The reversal is not challenged here, but that is immaterial since the Court now decides that the Board has the power to order reinstatement even though the employees have found other substantially equivalent employment, provided that the policies of the Act will be effectuated.

[3] Emphasis added.

[4] Emphasis added.

. . . ; (b) Make whole [the following employees] for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them . . . less the net earnings of each . . ."

The italicized phrases in these quotations were not chance or formal recitals. They expressed in summary a considered exercise of administrative discretion. The Board carefully followed the precise procedure which this Court says it should have adopted. It found that the employees in question had been the victims of unfair labor practices. It also found that the policies of the Act would be effectuated by ordering their reinstatement. Since there was evidence to support these findings, it is difficult to understand what more the Board should or could have done.

But if we are now to consider in the abstract whether the Board properly opined that it might have the power to order reinstatement without regard to the substantial equivalency of other employment, I am nevertheless unable to approve the modification of its order, or to accept the inference that the Board must consider the substantial equivalency of other employment before it may order reinstatement. There is nothing in § 10(c) or in the Act as a whole which expressly or impliedly obligates the Board to consider the substantial equivalency of other employment or to make findings concerning it before it may order reinstatement. Indeed, such a rule narrows rather than broadens the administrative discretion which the Act confers on the Board.

Practical administrative experience may convince the Board that the self-interest of the employee is a far better gauge of the substantial equivalency of his other employment than any extended factual inquiry of its own. Conversely, the Board may conclude that the policies of the Act are best effectuated by an investigation in every case into the nature of his other employment. That choice of rules is an exercise of discretion which Congress has entrusted to the Board. Whichever rule the Board adopts, it does not follow that reinstatement becomes a remedy which is granted automatically upon a finding of unfair labor practices. If for other reasons the Board finds that the policies of the Act will not be effectuated, of course it not only could but should decline to order an offer of reinstatement. Compare *Matter of Thompson Cabinet Co.*, 11 N. L. R. B. 1106.

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[5] Emphasis added.

Second. As already indicated, I am unable to accept the limitation now imposed on the Board's power to make back pay awards. Again the question is simply this: Was the back pay order within the power of the Board and supported by evidence? What order the Board should have made or what rule of law it should have followed if some of the employees had "willfully incurred" losses are questions of importance which we should answer only when they are presented. They are not here now.

The Board expressly found that the policies of the Act would be effectuated by ordering the employer to make whole those employees who had been the victims of discriminatory practices. We are pointed to nothing which requires a different conclusion. We are not referred to any employee who "willfully incurred" losses, or to any evidence in the record compelling us to hold that any of them did. At most the record shows only that some of the employees obtained other employment—which was not substantially equivalent—and then voluntarily relinquished it. For all we know, the Board could have determined that this evidence did not establish "willfully incurred" losses. Plainly that was a permissible inference from the evidence, and this being so, there is no occasion now to decide what the Board should have done had it drawn some other inference.

But again, if we are now to rule on the abstract issue, I cannot agree that the power to make back pay awards must be fettered in the manner described in the opinion just announced. For if the Board has no choice but to accept the limitation now imposed, its administrative discretion is curbed by the very decision which purports to leave it untouched.

It must be conceded that nothing in the Act requires such a limitation in so many words. To be sure nothing in the Act requires a back pay award to be diminished by the amounts actually earned (compare *Republic Steel Corp.* v. *N. L. R. B.*, 311 U. S. 7), but that should admonish us to hesitate before we introduce yet another modification which Congress has not seen fit to enact, especially when the two situations differ in many respects. It is not our function to read the Act as we think it should have been written, or to supplant a rule adopted by the Board with one which we believe is better. Our only office is to determine whether the rule chosen, tested in the light of statutory standards, was within the permissible range of the Board's discretion.

The Board might properly conclude that the policies of the Act would best be effectuated by refusing to embark on the inquiry whether the employees had willfully incurred losses. Administrative difficulties engendered by a contrary rule would be infinite, particularly as the number of individuals involved in the dispute increased. Underlying the contrary rule is the supposition that the employee would purposely remain idle awaiting his back pay award. But that attributes to the employee an omniscience frequently not given to members of the legal profession. He must be able to determine that the employer actually has committed unfair labor practices; that the unfair labor practices affect commerce within the meaning of §§ 2(6) and 2(7); that the Board will take favorable action and make a back pay award; that the Circuit Court of Appeals will enforce that order in full; and that this Court finally will affirm if the case comes here.

This is not all. He must have capital sufficient to provide for himself and for any dependents while he awaits the back pay award, even though that may not come until several years later.[6] He must risk union disfavor by dividing his efforts between a labor dispute and a search for a new job. He must realize, although his natural suppositions are otherwise, that he will probably not endanger seniority rights or chance of reinstatement by accepting other employment. He must be able to decide when he has made sufficient efforts to secure other employment notwithstanding that he is not told whether he can or must accept any job no matter where it is or what type of employment, wages, hours, or working conditions.

At his peril he must determine all these things because conventional common law concepts and doctrines of damages, applicable in suits to enforce purely private rights, are to be imported into the National Labor Relations Act.

Having these considerations in mind, supplemented perhaps by others not available or suggested to us, the Board might well decide that the rule disapproved here would best effectuate the policies of the Act. I do not think we should substitute our judgment on this issue for that of the Board.

Accordingly, I would affirm the order of the Board in full.

Mr. Justice BLACK and Mr. Justice DOUGLAS concur in this opinion.

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[6] The labor dispute which gave rise to this proceeding occurred in 1935.

SUPREME COURT OF THE UNITED STATES.

No. 38, 641.—October Term, 1940.

Phelps Dodge Corporation, Petitioner,
387 *vs.*
National Labor Relations Board.

National Labor Relations Board, Petitioner,
641 *vs.*
Phelps Dodge Corporation.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 28, 1941.]

Mr. Justice Stone.

With two rulings of the Court's opinion the Chief Justice and I are unable to agree.

Congress has, we think, by the terms of the Act, excluded from the Board's power to reinstate wrongfully discharged employees, any authority to reinstate those who have "obtained any other regular and substantially equivalent employment". And we are not persuaded that Congress, by granting to the Board, by § 10(c) of the Act, authority "to take such affirmative action, including reinstatement of employees with or without back pay as will effectuate the policies of the Act", has also authorized it to order the employer to hire applicants for work who have never been in his employ or to compel him to give them "back pay" for any period whatever.

The authority of the Board to take affirmative action by way of reinstatement of employees is not to be read as conferring upon it power to take any measures, however drastic, which it conceives will effectuate the policies of the Act. We have held that the provision is remedial not punitive, *Commonwealth Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 235, 236; see also *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 267, 268, and that its purpose is to effectuate the policies of the Act by achieving the "remedial objectives which the Act sets forth" and "to restore and make whole employees who have

been discharged in violation of the Act." *Republic Steel Corporation* v. *National Labor Relations Board*, 311 U. S. 7, 12. The Act itself has emphasized this purpose when, in including in the category of "employees" those who might not otherwise have been so included, it provided, § 2(3), that the term "employee" "shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment".

While the stated policy of a statute is an important factor in interpreting its command, we cannot ignore the words of the command in ascertaining its policy. In enlarging the category of "employees" to include wrongfully discharged employees and at the same time excluding from it those who have obtained "other regular and substantially equivalent employment", the Congress adopted a policy which it may well have thought would further the cause of industrial peace quite as much as the enforced employment of discharged employees where there was no occasion to compensate them for the loss of their employment. It is the policy of the Act and not the Board's policy which is to be effectuated, and in the face of so explicit a restriction of the definition of discharged employees to those who have not procured equivalent employment, we can only conclude that Congress has adopted the policy of restricting the authorized "reinstatement of employees" to that class.

Even if we read the language of § 2(3) distributively, it seems difficult to say that the specially granted power to reinstate employees, extends to those who, by definition, are not employees, and this is the more so when the effect of the definition is consonant with what appears to be the declared purpose of the reinstatement provision. Nor can it fairly be said that the definition of employees is of significance only for the purpose of determining the appropriate bargaining agency of the employees. There is no evidence in the statute itself or to be derived from its legislative history that the definition was not to be applied in the one case quite as much as in the other. Certainly the fact of substantially equivalent employment has as much bearing upon making the discharged employee whole as upon his right to participate in the choice of a bargaining representative, and no ground has been advanced for saying that it applies to one and not the other.

As a majority of the Court is of opinion that the Board does possess the power to order reinstatement even though the discharged employees had obtained other equivalent employment, we agree that the case should now be remanded to the Board for a determination of the question whether reinstatement here would further the policies of the Act.

We agree that petitioner's refusal to hire two applicants for jobs, because of their union membership, was an unfair labor practice within the meaning of § 8(3) of the Act, even though they had never been employees of the petitioner, and that under § 9(c) the Board was authorized to order petitioner to cease and desist from the practice and to take appropriate proceedings under § 10 to enforce its order. But it is quite another matter to say that Congress has also authorized the Board to order the employer to hire applicants for work who have never been in his employ and to compel him to give them "back pay."

The Congressional debates and committee reports give no hint that in enacting the National Labor Relations Act Congress or any member of it thought it was giving the Board a remedial power which few courts had ever assumed to exercise or had been thought to possess and we are unable to say that the words of the statute go so far. The authority given to the Board by § 10(c) is, as we have said, not an unrestricted power, and the grant is not to be read as though the words "including reinstatement of employees with or without back pay" were no part of the statute. None of the words of a statute are to be disregarded and it cannot be assumed that the introduction of the phrase in this one was without a purpose.

Undoubtedly the word "including" may preface an illustrative example of a general power already granted, *Helvering* v. *Morgans, Inc.*, 292 U. S. 121, 125, or it may serve to define that power or even enlarge it. Cf. *Montello Salt Co.* v. *Utah*, 221 U. S. 452, 462, *et seq.* Whether it is the one or another must be determined by the purpose of the Act, to be ascertained in the light of the context, the legislative history, and the subject matter to which the statute is to be applied.

In view of the traditional reluctance of courts to compel the performance of personal service contracts it seems at least doubtful whether an authority to the Board to take affirmative action could,

without more, fairly be construed as permitting it to take a kind of affirmative action which had very generally been thought to be beyond the power of courts. This is the more so because the Board's orders were by § 10(c) made subject to review and modification of the courts without any specified restriction upon the exercise of that authority.

It is true that in *Texas & N. O. R. Co.* v. *Railway Clerks,* 281 U. S. 548, this Court had held that upon contempt proceedings for violation of a decree enjoining coercive measures by the employer against his union employees, a court could properly direct that the contempt be purged on condition that the employer restore the status quo. But Congress in enacting the National Labor Relations Act took a step further by providing that the Board could order reinstatement of employees even though there had been no violation of any previous order of the Board or of a court. It thus removed the doubt which would otherwise have arisen by defining and, as we think, enlarging the Board's authority to take affirmative action so as to include the power to order "reinstatement" of employees. But an authority to order reinstatement is not an authority to compel the employer to instate as his employees those whom he has never employed, and an authority to award "back pay" to reinstated employees, is not an authority to compel payment of wages to applicants for employment whom the employer was never bound to hire.

Authority for so unprecedented an exercise of power is not lightly to be inferred. In view of the use of the phrase "including reinstatement of employees", as a definition and enlargement, as we think it is, of the authority of the Board to take affirmative action, we cannot infer from it a Congressional purpose to authorize the Board to order compulsory employment and wage payments not embraced in its terms.